# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1956

## No. 153

NORTON R. GANGER, L. C. BETHART, THOMAS B. HAMILTON, ET AL., APPELLANTS,

*vs.*

CITY OF MIAMI, A MUNICIPAL CORPORATION IN DADE COUNTY, EXISTING UNDER THE LAW OF THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

FILED JULY 3, 1956

PROBABLE JURISDICTION POSTPONED OCTOBER 15, 1956

# SUPREME COURT OF THE UNITED STATES

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# IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

In Chancery No. 159201

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THOMAS B. HAMILTON and JANE Q. HAMILTON, his wife, and HUNTER LYON, INC., a Florida corporation, Plaintiffs,

v.

THE CITY OF MIAMI, a municipal corporation in Dade County, existing under the laws of the State of Florida, Defendant.

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AMENDED COMPLAINT—Filed December 2, 1953

Thomas B. Hamilton and Jane Q. Hamilton, his wife, and Hunter Lyon, Inc., a Florida corporation, for themselves and on behalf of all other persons similarly situated, sue the City of Miami, a municipal corporation incorporated under the laws of the State of Florida, and allege that:

## 1.

This complaint is brought for the purpose of invalidating certain special assessment liens which the Defendant attempted to impose against the property of the Plaintiffs, as well as of those in whose behalf the suit is brought, and, in the case of those who have paid the assessments, to recover back for them the money which they so paid. The assessments so laid by the City are against the property abutting on the following streets and avenues:

NE 1st Avenue from SE 2nd Street to NE 14th Street

NE 2nd Avenue from Flagler Street to 41st Street

[fol. 2] NW and SW 3rd Avenue from SW 1st Street to NW 20th Street

South Miami Avenue from S.W. 1st Street to SW 15th Road

North Miami Avenue from Flagler Street to NW 20th Street

NW 2nd Avenue from NW 20th Street to NW 36th Street

SW 17th Avenue from Flagler Street to Tamiami Trail

2.

The Plaintiffs, Thomas B. Hamilton and Jane Q. Hamilton, having paid no part of the assessments against their property, sue as the representatives of all other property owners similarly situated. The Plaintiff, Hunter Lyon, Inc., has paid the assessments imposed against its property and sues as a representative of all other property owners similarly situated. These Plaintiffs bring this suit for the benefit of all persons against whose properties the assessments herein complained of have been made, including those who have paid no part of said assessment, those who have paid a part, and those who have paid all of the assessments against their properties.

3.

A map showing a portion of the City of Miami, including the streets and avenues described in Paragraph 1 is attached hereto and made a part hereof.

4.

On March 1, 1950, the Defendant City passed and adopted Resolution No. 22277 in words and figures as follows:

---

Resolution Number 22277

Highway Improvements H-477 District
A Resolution Ordering Local Improvement H-477

Be It Resolved by the City Commission of the City of Miami:

That a local improvement, described and designated as follows, shall be made under Section 56 of the City Charter:

Highway Improvement H-477 as follows:

[fol. 3] On: N.E. 1st Avenue from S.E. 2nd Street to N.E. 14th Street

N.E. 2nd Avenue from Flagler Street to 41st Street

N.W. and S.W. 3rd Avenue from S.W. 1st Street to N.W. 20th Street

South Miami Avenue from S.W. 1st Street to S.W. 15th Road

North Miami Avenue from Flagler Street to N.W. 20th Street

N.W. 2nd Avenue from N.W. 20th Street to N.W. 36th Street

S.W. 17th Avenue from Flagler Street to Tamiami Trail

For resurfacing of existing asphaltic concrete pavement with a fifty pound (50#) asphalt concrete leveler course and one inch (1") asphaltic concrete wearing surface, including necessary intersection returns and intersections.

The property against which special assessments for the cost thereof shall be made is hereby designated District H-477.

Passed And Adopted this 1st day of Mar. 1950.

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5.

The foregoing resolution was not published.

6.

Thereafter, Defendant caused to be published in the classified advertising section of the Miami Herald the following notice:

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Notice of Local Improvement

Highway Improvement District H-477

All interested will take notice that at a meeting of the City Commission at 9:30 o'clock A.M. March 15th,

1950, their objections will be heard to the confirmation of Resolution No. 22277, adopted March 1st, 1950, ordering paving improvements on the following avenues, to-wit:

N.E. 1st Avenue, from S.E. 2nd Street to N.E. 14th Street;

N.E. 2nd Avenue, from Flagler Street to 41st Street;

N.W. and S.W. 3rd Avenue, from S.W. 1st Street to N.W. 20th Street;

South Miami Avenue, from S.W. 1st Street to S.W. 15th Road;

[fol. 4] North Miami Avenue, from Flagler Street to N.W. 20th Street;

N.W. 2nd Avenue, from N.W. 20th Street to N.W. 36th Street;

S.W. 17th Avenue, from Flagler Street to Tamiami Trail

Designated Improvement H-477.

Plans, specifications and estimate of cost of said improvement are on file in the City Clerk's office.

F. L. Correll, City Clerk.

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Said notice was published one time in the issue of said paper published on March 4, 1950. A photostatic copy of the page of the paper containing said advertisement is attached hereto marked Exhibit 2 and made a part hereof.

7.

At the time of the adoption of Resolution 22277, and at the present time, the streets described in Highway Improvement District H-477 were main thoroughfares of the City of Miami. These streets had originally been paved, at the expense of the abutting property owners, and the paving had been laid with sufficiently suitable and durable surface to enable all abutting property owners to obtain ingress

and egress to and from their several properties and to afford reasonable use by the general public. The streets in said highway improvement district were not reasonably in need of being resurfaced, and it was not necessary to do the work thereon which the Defendant City subsequently performed and for which it thereafter imposed special assessment liens on the abutting properties.

8.

None of the Plaintiffs or those on whose behalf this suit is brought, became aware of any physical conditions existing on the streets and avenues abutting on their several properties which would justify the Defendant City in resurfacing the streets and charging the cost thereof against the abutting property owners, and not being sufficiently [fol. 5] informed either by Resolution 22277 or the Notice of Local Improvement described in Paragraph 6 above, neither the Plaintiffs nor those for whom this suit is brought filed objections as specified in said Notice.

9.

If, in fact, the streets in Highway Improvement District H-477 were in need of resurfacing, it was not for the purpose of affording the Plaintiffs ingress and egress to and from their several properties, nor to permit the general public to use such streets and avenues in a reasonable way, but it was to facilitate the use of said streets by the buses of the Miami Transit Company, a common carrier in the City of Miami. The buses which the Miami Transit Company operates on the streets and avenues in Highway Improvement District H-477 are very large and capable of carrying as many as from forty to seventy passengers. These buses operate on fixed schedules which require the movement of buses over the streets in said Highway Improvement District many times a day. In recognition of the fact that the continued use by the Miami Transit Company of said streets and the operation of its buses over them was destructive of the surface of said streets, the Defendant, in granting to Miami Transit Company a ten-year franchise for transportation of passengers in buses

over the streets of the City of Miami, required the Company to pay to the City for the use of the Streets the sum of $85,000.00 per Annum, together with further sums, equal to five per cent of the Company's gross revenues. From this franchise, the City has realized approximately $200,000.00 per annum. The original ten-year franchise was extended until October 8, 1955.

10.

Following the adoption of Resolution 22277, the City proceeded to resurface the streets in Highway Improvement District H-477 with fifty-pound asphalt leveler and one-inch [fol. 6] asphaltic wearing surface and thereafter on March 18, 1953, attempted to lay upon the several properties of the Plaintiffs and those for whom this wuit (sic) is brought, special assessment liens which sought to impose upon the abutting property owners the cost of the doing of said work in the sum of $173,184.00. The cost of paving the intersections, which amounted to $38,016.00, was assumed by the City.

11.

The Defendant paid all of the cost of said work out of general funds of the City which had been accumulated in a fund called Capital Surplus Account. The funds in the account were accumulated out of unexpended surpluses over budget estimates and appropriations in various funds of the City for a period of several years, and the subsequent assessments herein complained of were levied to reimburse such Capital Surplus Account for the sums so withdrawn and used in payment of the work of resurfacing the streets in Highway Improvement District H-477.

12.

The special assessment liens sought to be imposed upon the abutting property owners in Highway Improvement District H-477 are illegal and void and constitute taking of property in violation of the Constitution of the United States and of the State of Florida, upon the following grounds:

A. Resolution No. 22277 is insufficient in fact and law and gives no indication in any manner that the Defendant City intended to impose special assessment liens against the abutting properties in said District.

B. The Notice described in Paragraph 6 hereof requiring the filing of objections on March 15, 1950, was insufficient in fact and in law. No interested person was notified that objections should be filed to the confirmation of the Resolution, and the object of the Resolution was not set forth in said notice.

[fol. 7] C. The Notice was published in an inconspicuous place upon the Classified advertising section of the Miami Herald, a position in which it was least likely to attract the attention of persons such as the Plaintiffs and those on whose behalf this suit is brought.

D. Resolution No. 22277 and the subsequent Resolutions which the Defendant City adopted during and subsequent to the progress of the work do not comply with Chapter 56 of the Charter of the City of Miami in that the properties against which the assessments were made were not designated as required by said Chapter.

E. The improvements which the City made were of a general and public character, and not for the benefit of the abutting property owners.

F. Inasmuch as the City of Miami was collecting from Miami Transit Company approximately $200,000.00 per annum for the repair of streets used by the buses of said Company, and by reason of the acts of the Defendant so set forth in Paragraph 11 hereof, the subsequent attempt on the part of the City to assess the cost of such repair against such abutting property violated the rule laid down in the case of *City of St. Cloud* v. *Carlton,* 78 Fla. 131, 82 So. 616.

G. The apportionment of the cost of the work of resurfacing the streets in Highway Improvement District H-477 between the property owners and the Defendant City was entirely disproportionate to the benefits conferred, if any.

Wherefore, Plaintiffs pray that the Court decree that the assessments made against the Plaintiffs, and all other similarly situated, for the improvement of the avenues described in Highway Improvement District H-477, be declared void and the Defendant permanently enjoined from attempting to collect the same, and that the Defendant [fol. 8] be required to repay to those Plaintiffs and all persons similarly situated who have paid all or part of the said assessment, the sum of money paid to the said Defendant upon said assessment, together with interest thereon at the legal rate, and for such other and further relief as to the Court seems proper.

/s/ Anderson & Nadeau, Attorneys for Plaintiffs.

Anderson & Nadeau, First National Bank Building, Miami 32, Florida.

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[fol. 8a]

EXHIBIT 2 TO AMENDED COMPLAINT

CLASSIFIED

INFORMATION

RATES PER LINE PER INSERTION EFFECTIVE SEPTEMBER 9th 1949

| Times | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 30 |
|---|---|---|---|---|---|---|---|---|
| Per Day | 30c | 30c | 30c | 30c | 30c | 30c | 30c | 31c |

14 pt same rate as 3 lines ordinary type.

18 pt same rate as 4 lines ordinary type.

24 pt same rate as 5 lines ordinary type.

36 pt same rate as 7 lines ordinary type.

National Advertising Rates

These rates apply to advertisements emanating from outside the state of Florida. No reduction for consecutive insertions. Minimum charge 34c. Ordinary type 42c per line per day. Light Face Caps 63c per line per day.

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In the event of any error in an advertisement on the part of the publisher it will furnish the advertiser a letter so worded as to explain the said error and the publisher shall be otherwise relieved from responsibility thereof.

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The Herald will not be responsible for more than one incorrect insertion.

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The Miami Herald reserves the privilege of revising or rejecting any advertisement which it deems objectionable and to change the classification of any advertisement from that ordered to conform to the policy of this paper.

TELEPHONE 9-3711

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USE THE HERALD FOR RESULTS

## LEGAL NOTICES

NOTICE OF LOCAL IMPROVEMENT

Highway Improvement District H-477

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All interested will take notice that at a meeting of the City Commission at 9:30 o'clock A. M. March 15th, 1950, their objections will be heard to the confirmation of Resolution No. 22277, adopted March 1st, 1950, ordering paving improvements on the following avenues, to-wit:

N. E. 1st Avenue, from S. E. 2nd Street to N. E. 14th Street;

N. E. 2nd Avenue, from Flagler Street to 41st Street;

N. W. and S. W. 3rd Avenue, from S. W. 1st Street to N. W. 20th Street;

South Miami Avenue, from S. W. 1st Street to S. W. 15th Road;

North Miami Avenue, from Flagler Street to N. W. 20th Street;

N. W. 2nd Avenue, from N. W. 20th Street to N. W. 36th Street;

S. W. 17th Avenue, from Flagler Street to Tamiami Trail.

Designated Improvement H-477.

Plans, specifications and estimate of cost of said improvement are on file in the City Clerk's office.

F. L. CORRELL
City Clerk

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[fol. 18]

IN THE CIRCUIT COURT FOR DADE COUNTY

Following Denial of the City's Petition for Certiorari the City Filed Its Answer in Words and Figures as Follows:

ANSWER IN CASE #159201

City of Miami, by and through its undersigned counsel, for answer to the Bill of Complaint as amended, avers:

1. Defendant is without knowledge of the allegations contained in Paragraph 1 of the Amended Bill of Complaint with the exception of those allegations referring to assessments made by the City against the property abutting on the said described streets and avenues, which defendant admits.

2. This defendant admits that plaintiffs purport to sue on their own behalf and on behalf of all other owners of real property abutting on the streets and avenues as set out in the Amended Bill of Complaint against whom assessments have been made by the City for the cost thereof, but defendant denies that plaintiffs do represent all of the various classes of such property owners.

3. Defendant admits the allegations of Paragraphs 3, 4, 5 and 6 of the Amended Complaint. Defendant states that for further answer to Paragraph 5 that publication of the referenced resolution is not required.

4. Defendant admits that part of Paragraph 7 alleging that streets had originally been paved at the expense of the abutting property owners. The remaining allegations and conclusions of the plaintiff are denied.

5. Defendant admits that part of Paragraph 8 alleging that neither the plaintiffs nor those for whom this suit is brought, filed objections as required by said notice. The remaining allegations and conclusions of the plaintiffs are denied.

[fol. 19] 6. Defendant denies the allegations of Paragraph 9 with the exception of those allegations referring to the existence and terms of the franchise granted to the Miami Transit Company. The said franchise covers the use of a majority of the streets and avenues of the City and the streets and avenues involved in this suit are a minor portion thereof.

7. Defendant admits Paragraph 10 of the Amended Complaint as will be more fully set forth hereinafter.

8. Defendant denies Paragraphs 11 and 12 of the Amended Complaint.

9. Defendant denies that plaintiffs and each of them and each of those whom plaintiffs purport to represent, are entitled to the relief sought in the prayer of the said Amended Bill of Complaint, and further says that plaintiff Hunter Lyon, Inc. and all those persons whom Hunter Lyon, Inc. purport to represent who have paid all or part of their assessments here in question, have a plain and adequate remedy at law for the recovery of the monies paid if they be entitled to such recovery. Defendant further denies any other and further allegations contained in said Amended Bill of Complaint which it has not expressly denied or admitted hereinabove.

10. Affirmatively answering the Amended Bill of Complaint, this defendant alleges that it is a municipal corporation, organized and existing under the laws of the State of Florida; that under its general Charter, which is Chapter 10847, Special Acts of Florida 1925, the defendant was given the power to pave, re-pave, macadamize, and re-macadamize

highways, the necessary drainage, sewer inlets, manhole and catch basins, and if the Commission so orders, may embrace curbs and gutters, and that pursuant to and in accordance with this power, the City Commission of the defendant by Resolution 22277 ordered a local improvement [fol. 19a] designated as Highway Improvement H-477. The ordering resolution followed the requirements of Section 56(c) of the City Charter by ordering the local improvements to be made by indicating the location by terminal points and route; giving a description of the improvement by its material, nature, character and size; giving the short and convenient designation (Highway Improvement H-477) to the improvement; and designating as District H-477 the property against which the assessments are to be made for the cost of such improvement and thereafter the City Manager filed with the City Clerk of the defendant corporation his preliminary estimate as to the cost of said improvements together with plans and specifications, and upon the filing with the City Clerk of such plans, specifications and estimates the City Clerk caused to be published on March 4, 1950 the notice of hearing following literally the requirements of Section 56(e) of the City Charter, said notice stating that at a meeting of the City Commission on a certain day, March 15, 1950 and hour, 9:30 A.M., the City Commission would hear the objections of all interested persons to the confirmation of Resolution No. 22277 adopted March 1, 1950, and in brief and general terms a description of the proposed improvement with the location thereof, and that plans, specifications and estimates of the cost thereof are on file in the Office of the City Clerk. At the time named in said notice of the City Commission called a hearing for the purpose of receiving objections of all persons interested in the confirmation of said Resolution No. 22277, ordering the said improvements, all in conformity with the provisions of the Charter hereinabove described, no objections were sustained and the City Commission by Resolution No. 22301 confirmed Resolution No. 22277 (ordering Highway Improvement District H-477). Defendant alleges that by virtue of the proceedings herein- [fol. 19b] above set forth and the resolution ordering said improvements, defendant acquired jurisdiction to make the

said improvements. Defendant further alleges that plaintiffs and all those persons whom plaintiffs purport to represent, were under the duty therefor to appear and object if they so desired to the confirmation of Resolution 22277 ordering said improvements, that notwithstanding the fact that they were under such duty to object to the commencement of the proceedings ordering said improvements, plaintiffs and each of them and each of the persons whom plaintiffs purport to represent in this cause, wholly failed to appear and wholly failed to make any objection whatever to the confirmation of the resolution ordering said improvements. Defendant further alleges that plaintiffs and each of them and each of those persons whom plaintiffs purport to represent herein, were under the duty by reason of being properly and legally notified to appear and object, to file their written objections with the City Clerk of the defendant to the confirmation of the assessment roll as required by Section 56(l)(m) of the said City Charter and Special Acts. Plaintiffs and each of them and each of those persons whom they purport to represent failed to appear and failed to file their written objections to the confirmation of the assessment roll. Defendant further alleges that plaintiffs and each of them and each of those persons whom they purport to represent failed to file within ten days from the confirmation of the assessment roll fixing assessments complained of in the Amended Bill of Complaint, their written verified petition in the Office of the Clerk of the Circuit Court in and for Dade County, Florida, in conformity with Section 56(n) of the said City Charter, objecting to the assessments or any phase thereof, or questioning the benefits accruing to the property of each of such property owners, and further alleges that the time for taking an [fol. 19c] appeal from the decision of the Circuit Court, which was provided for in that section of the Charter and Act hereinabove cited, has expired.

11. Defendant further alleges that plaintiffs and each of them and each of those whom plaintiffs purport to represent, who failed to appear and object at the meeting hereinabove set forth and who failed to take advantage of the appeal to the Circuit Court provided for, as hereinabove

set forth, waived their rights to object to the assessments here in question, waived their rights to question the benefits accruing to their property, and are now estopped by their failure to act as required by law, to question herein the validity of the assessments, and are estopped to question the benefits accruing to their property.

12. Further affirmatively answering, this defendant alleges that the conduct of the plaintiffs and each of them and each of those whom plaintiffs purport to represent, in permitting the improvements to be accomplished without inquiry or objection on their part to ascertain the method of financing, including the advertising for contractors' bids, the letting of contracts, the performance of the work involved, the payment of the contracts, and the assessment of the costs, estopps the plaintiffs to now question the validity of the assessment lien.

13. Further affirmatively answering, this defendant alleges that each of the actions of the defendant were taken pursuant to substantial compliance with the Charter of the City of Miami, and that all of the acts questioned in the complaint are lawful and not in controvention (sic) of the rights of the plaintiffs and those plaintiffs purport to represent.

14. Further affirmatively answering, this defendant alleges that the streets and avenues involved herein were [fol. 19d] in need of paving, re-paving, macadamizing, and re-macadamizing prior to the actions of the Commission of the City of Miami.

15. Further answering, this defendant alleges that the plaintiffs and each of them and each of the persons whom plaintiffs purport to represent, had actual knowledge, or were charged with knowledge that the defendant was making the improvements here in question and for which the assessments complained of were made, before, during, and after the time said improvements were made, and that although the statutes and laws under which said improvements were made and the general laws of the State of Florida provided plaintiffs with various means for objecting to the assessments or showing that no benefits would accrue to their property, and provided plaintiffs with a

means of preventing the said work from being done if the assessments were invalid or of no benefit to plaintiffs' property, the plaintiffs and each of them and each of the persons whom plaintiffs purport to represent stood by, acquiesed (sic) in, and did not object to the work being done, and failed to use the remedy so provided by law, and thereby plaintiffs waived any right which they had to object and plaintiffs and each of them and each of the persons whom plaintiffs purport to represent, are now estopped from asserting the invalidity of the assessments here in question and are estopped from denying the benefit of value of the improvements so made by the defendant. Defendant further alleges that the action of the City Commission in determining that the streets were in need of the work performed and that each of the plaintiffs were especially benefited by the local improvement involved here, is conclusive upon the plaintiffs and that the action of the City Commission in confirming the preliminary assessment roll is conclusive upon the plaintiffs.

16. Further answering, this defendant alleges that the cost of the improvements was advanced by the City from [fol. 19e] the general fund surplus account to be reimbursed by levy of the special assessment, as evidenced by the adoption of the special assessment resolution.

17. Further answering, this defendant alleges that Section 5C(p) of said City Charter provides that if the owner of any lot or parcel assessed in excess of $25.00 shall file with the Director of Finance such date on which full payment is required his written undertaking, waiving all irregularity and illegality in connection with the said assessment against said lot or parcel, he shall have the privilege of paying the same in equal annual installments in each of the ten succeeding years or such shorter period as may be fixed by the Commission, and that, therefore, the plaintiffs and each of them and each of the persons whom plaintiffs purport to represent, having paid a portion of the special assessments, have expressly waived any purported irregularities or illegalities in connection with the said assessment.

Wherefore, defendant alleges that plaintiffs and each of them and each of the persons whom plaintiffs purport to represent, are not entitled to the relief sought and hereby renews its defensive motions as if fully set out herein en haec verba, and prays that this Court dismiss the Amended Bill of Complaint, with costs assessed against the plaintiffs.

J. W. Watson, Jr., City Attorney, Robert M. Haverfield, Assistant City Attorney, Solicitors for Defendant, By /s/ Robert M. Haverfield, Of Counsel.

(Certification of mailing omitted)

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[fol. 19f]

DEFENDANT'S EXHIBIT #1 FILED IN EVIDENCE 7/20/54 M.C.W.

RESOLUTION NUMBER 22277

HIGHWAY IMPROVEMENT H-477 DISTRICT
A RESOLUTION ORDERING LOCAL IMPROVEMENT H-477

BE IT RESOLVED by the City Commission of the City of Miami:

That a local improvement, described and designated as follows, shall be made under Section 56 of the City Charter: Highway Improvement H-477 as follows:

ON:

N.E. 1st Avenue from S.E. 2nd Street to N.E. 14 Street

N.E. 2nd Avenue from Flagler Street to 41st Street

N.W. and S.W. 3rd Avenue from S.W. 1st Street to N.W. 20th Street

South Miami Avenue from S.W. 1st Street to S.W. 15th Road

North Miami Avenue from Flagler Street to N.W. 20th Street

N.W. 2nd Avenue from N.W. 20th Street to N.W. 36th Street

S.W. 17th Avenue from Flagler Street to Tamiami Trail

For resurfacing of existing asphaltic concrete pavement with a fifty pound (50#) asphalt concrete leveler course and one inch (1") asphaltic concrete wearing surface, including necessary intersection returns and intersections.

The property against which special assessments for the cost thereof shall be made is hereby designated District H-477.

PASSED AND ADOPTED this 1st day of Mar. 1950.

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DEFENDANT'S EXHIBIT "B" FILED IN EVIDENCE 7/22/54 M.C.W.

CITY MANAGER'S ESTIMATE OF COST

of

LOCAL IMPROVEMENT AND INCIDENTAL EXPENSES FOR STREET RESURFACING

HIGHWAY IMPROVEMENT H-477, DISTRICT

[fol. 19g] ORDERED BY RESOLUTION NO. 22277 ADOPTED Mar. 1, 1950.

| | | |
|---|---|---|
| ESTIMATED COST OF IMPROVEMENT | | $192,000.00 |
| ESTIMATED INCIDENTAL EXPENSES: | | |
| 1. Surveys and Estimates | $4,000.00 | |
| 2. Inspection, tests and supervision of construction | $8,000.00 | |
| 3. Preparation of plans and specifications | $4,000.00 | |
| 4. Printing and publishing notices and proceedings | $ 100.00 | |
| 5. Preparation of bonds | $ | |
| 6. Interest during construction | $ | |
| 7. Legal services, abstracts, etc | $ | |
| 8. Other necessary and proper expenses | $3,100.00 | |
| Total incidental expenses | | $ 19,200.00 |
| TOTAL ESTIMATED COST AND INCIDENTAL EXPENSES | | $211,200.00 |

DISTRIBUTION:

| | | |
|---|---|---|
| 1. | Estimated cost to be paid by City of Miami | $ 38,016.00 |
| 2. | Estimated cost to be assessed abutting property | $173,184.00 |
| 3. | Estimated cost of —— lin. ft. lateral | $ |
| 4. | Number of feet of property abutting improvement | $ 84,945.00 |
| 5. | Estimated assessment per front foot | $ 2.04 |
| 6. | Estimated assessment per lin. ft. of lateral | $ |

WITNESS my signature at Miami, Florida, this 3rd day of Mar., A.D. 1950.

(s) O. P. Hart
City Manager.

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DEFENDANT'S EXHIBIT C FILED IN EVIDENCE 7/22/54

[fol. 19h] THE MIAMI HERALD

Published Daily

Miami — Dade — Florida

STATE OF FLORIDA
COUNTY OF DADE:

Before the undersigned authority personally appeared M.F. Self, who on oath says that he is Classified Advertising Manager of The Miami Herald, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement, being a ..... in the matter of ..... in the ..... Court, was published in said newspaper in the issues of

3/4, 1950

Affiant further says that the said The Miami Herald is a newspaper published at Miami, in the said Dade County, Florida, and that the said newspaper has heretofore been continuously published in said Dade County, Florida, each day and has been entered as second class

mail matter at the post office in Miami, in said Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or fund for the purpose of securing this advertisement for publication in the said newspaper.

/s/ M. F. Self

Sworn to and subscribed before me this 6th day of March, A.D. 1950

Louise Muhleman
Notary Public, State of Florida
at large My commission expires
Nov. 4, 1953.
Bonded by American Surety Co. of
N.Y.

NOTICE OF LOCAL IMPROVEMENT Highway Improvement District H-477

All interested will take notice that at a meeting of the City Commission at 9:30 o'clock A.M. March 15th, 1950 their objections will be heard to the confirmation of Resolution No. 22277, adopted March 1st, 1950 ordering paving improvements on the following avenues, to-wit:

N.E. 1st Avenue from S.E. 2nd Street to N.E. 14th Street; N.E. 2nd Avenue from Flagler Street to 41st Street; N.W. and S.W. 3rd Avenue from S.W. 1st Street to N.W. 20th Street; South Miami Avenue from S.W. 1st Street to S.W. 15th Road; North Miami Avenue from Flagler Street to N.W. 20th Street; N.W. 2nd Avenue from N.W. 20th Street to N.W. 36th Street S.W. 17th Avenue, from Flagler Street to Tamiami Trail.

Designated Improvement H-477. Plans, specifications and estimate of cost of said improvement are on file in the City Clerk's office.

F.L. Correll
City Clerk

3-4-50

DEFENDANT'S EXHIBIT #1 FILED IN EVIDENCE 7/20/54
MARSHALL C. WISEHEART

[fol. 19i]

RESOLUTION NO. 22301

A RESOLUTION CONFIRMING RESOLUTION NO. 22277 ORDERING PAVING IMPROVEMENT IN HIGHWAY IMPROVEMENT DISTRICT H-477.

WHEREAS, at a meeting held at 9:30 o'clock A.M., March 15, 1950, after legal notice, the City Commission heard all objections presented by interested persons to the confirmation of Resolution No. 22277, ordering Highway Improvement District H-477, which included construction on the following streets:

NE 1st Avenue from SE 2nd Street to NE 14th Street;
NE 2nd Avenue from Flagler Street to 41st Street;
NW and SW 3rd Avenue from SW 1st Street to NW 20th Street;
South Miami Avenue from SW 1st Street to SW 15th Road;
North Miami Avenue from Flagler Street to NW 20th Street;
NW 2nd Avenue from NW 20th Street to NW 36th Street;
SW 17th Avenue from Flagler Street to Tamiami Trail,

and the plans and specifications and estimate of cost thereof, and no objections were sustained;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY MIAMI, FLORIDA:

What Resolution No. 22277, adopted March 1st, 1950, ordering Highway Improvement District H-477, be, and the same is hereby confirmed.

PASSED AND ADOPTED this 15th day of Mar., A.D. 1950.

MIAMI DAILY NEWS

Published Daily
Miami, Dade County, Florida

Before the undersigned authority personally appeared Jacob Booth who on oath says that he is Controller of the Miami Daily News, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement, being legal notice in the matter of Preliminary Assessment Roll—District H-477 in the ..... Court, was published in said newspaper in the issues of February 20 & 27, 1953

[fol. 19j] Affiant further say that the said Miami Daily News is a newspaper published at Miami, in said Dade County, Florida, and that the said newspaper has heretofore been continuously published in said Dade County, Florida, each day and has been entered as second class mail matter at the postoffice in Miami, in said Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

J. Booth

Sworn to and subscribed before
me this 27th day of February, A.D. 1953

(SEAL)

Roland Wilfred Vandrin
Notary Public

Notary Public, State of Florida at large
My commission expires May 15, 1955
Bonded by American Surety Co. of N.Y.

NOTICE TO PROPERTY OWNERS Preliminary Assessment Roll District H-477

All interested will take notice that at a meeting of the City Commission at 9:30 o'clock A.M. March 4th 1953, their objections will be heard to the confirmation of the Preliminary Assessment Roll for the cost of paving improvements on the following Avenues, to-wit:

SE & NE 1st Ave., from SE 2nd St. to NE 14th St.;

N. Miami Ave., from Flagler St., to North 20th St. in District H-477

Said Preliminary Assessment Roll is now opén to public inspection in the City Clerk's Office.

F.L. Correll
City Clerk

Similar notices were published regarding the assessments on property abutting other streets in the District.

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[fol. 20]

IN THE CIRCUIT COURT FOR DADE COUNTY

FINAL DECREE IN CHANCERY CAUSE NO. 159201—February 16, 1955

The above cause came on to be heard before me upon the complaint, answer, and the testimony taken before the Court, and the Court being fully informed of its judgment to be given in the premises, finds as follows:

1. That on March 1, 1950, the defendant City adopted Resolution 22277 in which it created Highway Improvement District No. h-477, comprising the following streets and thoroughfares in Miami, Florida, namely:

NE 1st Avenue from SE 2nd Street to NE 14th Street;

NE 2nd Avenue from Flagler Street to 41st Street;

NW and SW 3rd Avenue from SW 1st Street to NW 20th Street;

South Miami Avenue from SW 1st Street to SW 15th Road;

North Miami Avenue from Flagler Street to NW 20th Street;

NW 2nd Avenue from NW 20th Street to NW 36th Street;

SW 17th Avenue from Flagler Street to Tamiami Trail.

2. Thereafter, the City caused to be published in the classified advertising section of the Miami Herald a notice requiring all persons to take notice that at a meeting of the City Commission at 9:30 o'clock A.M. on March 15th objections would be heard to the confirmation of such resolution.

3. That thereafter the defendant City resurfaced the existing streets comprising said Improvement District by applying a 50-pound leveler course, and a 1-inch asphaltic concrete wearing surface to the existing pavement. The base and the existing surface were in no wise disturbed except in a very limited area where old street railway ties were removed. The existing curbings and gutters were in no wise altered.

4. The City imposed the cost thereof upon the abutting property owners, with the exception of the intersections, the cost of which was assumed by the City.

[fol. 21] 5. The notice of the hearing of objections to the imposition of the assessment hereinabove referred to was insufficient as a matter of law in that it specified no place where the objections would be heard, and there was no designation in the notice of what city commission was to hear objections, no designation of the City in which the streets were located, or of what city the person filing the notice was clerk. The notice was also insufficient because it was inserted in the classified section of the Miami Herald and in such a manner that it cannot be said that any reasonable person was put upon notice by it that their property was going to be subjected to a special assessment.

6. The streets which comprise Highway Improvement District No. H-477 are thoroughfares and arterial highways, with but one exception, in the city of Miami, and the resurfacing was necessary to keep the streets in repair to facilitate the flow of traffic on such streets in and out of the downtown Miami area.

7. No special benefit was conferred upon the abutting property by the resurfacing of said streets, and the benefit which was derived therefrom was general and not special.

8. The City of Miami resurfaced in a similar manner Flagler Street in an area which traverses the streets involved in Highway Improvement District No. H-477, and paid the cost of that resurfacing from the general funds. This fact was admitted by counsel for the City at the time of final argument.

9. The cost of said resurfacing was paid for by the City out of a surplus in the general fund which had accumulated over the course of years from many sources.

[fol. 22] It is therefore Ordered, Adjudged and Decreed as follows:

1. That as a result of the findings hereinabove contained, the City was without lawful authority to impose on the abutting property owners the cost of the resurfacing of the streets comprising Highway Improvement District H-477, and the action of the City in assessing the cost of the paving of the streets against the abutting owners was unreasonable and null and void.

2. This cause is hereby referred to J P Marchant as Special Master, and he is hereby directed to ascertain and determine which of the abutting owners in Highway Improvement District H-477 have paid the assessment liens and which have not; that said Special Master shall report to the Court within 60 days from the date of this order his recommendations as to the persons to whom refunds should be made for the amounts which the City has received on account of said special assessment liens and the date on which, if any, interest on repayments should be charged against the City, together with a statement of the persons whose liens have not been paid and the method by which cancellation of such liens should be effected.

3. The said Special Master shall also recommend to this Court what attorneys fees should be allowed to the attorneys for the plaintiffs, and the method by which the payment of such fees shall be accomplished, both with respect to the parties who have paid their liens and those who have not.

4. This decree is final as to the determination of the invalidity of the special assessment liens as hereinabove set forth. Jurisdiction is retained for the purpose of enter-
[fol. 23] ing such further orders as may be necessary to carry out the further provisions of the decree.

Done and Ordered in Chambers at Miami, Florida, this 16 day of February, 1955.

/s/ Marshall C. Wiseheart, Circuit Judge.

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IN THE CIRCUIT COURT FOR DADE COUNTY

ORDER AMENDING FINAL DECREE IN CASE NO. 159201
—March 22, 1955

This Cause coming on to be heard upon motion ore tenus by the City of Miami to strike paragraph "8" of the Final Decree as heretofore entered by this Court on the basis that such findings are inaccurate in that the cost of resurfacing Flagler Street was not made from general funds of the City, and counsel for the respective parties herein being present, and the Court being fully advised in the premises, it is

Ordered, Adjudged and Decreed that the Final Decree as heretofore entered in this cause on February 17, 1955, be and the same is hereby amended to the extent that paragraph "8" thereof be and the same is hereby stricken from the said Final Decree.

Done and Ordered at Miami, Florida, this 22nd day of March, 1955.

Marshall C. Wiseheart, Circuit Judge.

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[fol. 24]

IN THE CIRCUIT COURT FOR DADE COUNTY

NOTICE OF APPEAL IN CASE NO. 159201

The defendant The City of Miami, a Municipal Corporation existing under the laws of the State of Florida, by and through its undersigned attorneys, takes and enters

its appeal to the Supreme Court of Florida to review the final decree, as amended, of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, bearing date the 17th day of February, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1171, page 385, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Watson, Jr., City Attorney, Robert M. Haverfield, Assistant City Attorney, Attorneys for Defendant City of Miami, a Municipal Corporation. By /s/ Robert M. Haverfield, Of Counsel.

(Certification of delivery omitted).

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IN THE CIRCUIT COURT FOR DADE COUNTY

CITY OF MIAMI'S ASSIGNMENTS OF ERROR IN CASE NO. 159201

Comes Now The City of Miami, a Municipal Corporation existing under the laws of Florida, within less than ten (10) days from the filing of the Notice of Appeal herein, and assigns the following as error upon which it intends to rely in the Supreme Court of Florida, for the reversal of the Final Decree entered February 17, 1955 herein, as amended, as follows, to wit:

[fol. 25]

* * * * * * *

3. The Chancellor erred in finding that the Notice of Hearing of Objections to the Confirmation of the Resolution ordering Highway Improvement District H-477 was insufficient as a matter of law.

4. The Chancellor erred in finding that the Notice was insufficient because it was inserted in the classified section of the "Miami Herald."

5. The Chancellor erred in finding that any reasonable person was not put upon notice that their property was to be specially assessed.

* * * * * * *

[fol. 26]

* * * * * * *

J. W. Watson, Jr., City Attorney, Robert M. Haverfield and John H. Smith, Assistant City Attorneys, Attorneys for Defendant City of Miami, a Municipal Corporation, By Robert M. Haverfield, Of Counsel.

CLERK'S NOTE RE GANGER CASE NO. 167798-G

On April 1, 1954, Norton R. Ganger and L. C. Bethart filed their complaint which was substantially identical with the complaint filed in the Hamilton case. The Granger (sic) case is numbered 167798-G. City filed an answer substantially identical with the answer filed in the Hamilton case.

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IN THE CIRCUIT COURT FOR DADE COUNTY

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NORTON R. GANGER and L. C. BETHART, et al., Plaintiffs,

v.

THE CITY OF MIAMI, a municipal corporation in Dade County, existing under the laws of the State of Florida, Defendant.

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FINAL DECREE CHANCERY CAUSE NO. 167798-G—
February 17, 1954

The above cause came on to be heard before me upon the complaint, answer, and the testimony taken before the Court, and the Court being fully informed of its judgment to be given in the premises, finds as follows:

1. On November 19, 1952, the defendant City enacted Resolution No. 25006, in which it created Highway Improvement District No. H-503, comprised of the following street or thoroughfare in the City of Miami, Florida, namely:

South Miami Avenue from SW 15th Road to 200 feet more or less south of Alatka Street.

[fol. 27] 2. Thereafter, the City caused to be published in the classified section of the Miami Herald a notice requiring all interested persons to take notice that a meeting of the City Commission at 9:30 o'clock A.M. on December 3, 1952 would be held, at which objections would be heard to the confirmation of such resolution.

3. Thereafter, the defendant City resurfaced the street comprising said Improvement District No. H-503 by applying a ½-inch leveler course and a 1-inch surface course to the existing pavement. The base and the existing surface were in no wise disturbed. The existing curbings and gutters were in no wise altered.

4. The City imposed the cost of the resurfacing upon the abutting owners, with the exception of the intersections, which was paid for by the City.

5. The notice of the hearing of objections to the imposition of the assessment hereinabove referred to was insufficient as a matter of law in that it specified no place where the objections would be heard, and there was no designation in the notice of what City commission was to hear objections, no designation of the city in which the street was located, or of what city the person filing the notice was clerk. The notice was also insufficient because it was inserted in the classified section of the Miami Herald and in such a manner that it cannot be said that any reasonable person was put upon notice by it that their property was going to be subjected to a special assessment.

6. The resurfacing was necessary to keep the street in repair and facilitate the flow of traffic. The work was for the benefit of the general public, and the abutting owners received no special benefit.

[fol. 28] 7. The cost of the resurfacing was paid for with funds from a surplus in the general fund accumulated over the course of years.

It is therefore Ordered, Adjudged and Decreed as follows:

1. That as a result of the findings hereinabove contained, the City was without lawful authority to impose on the abutting property owners the cost of the resurfacing of the streets comprising Highway Improvement District No. 503, and the action of the City in assessing the cost of the paving of the street against the abutting owners was unreasonable and null and void.

2. This cause is hereby referred to J. P. Marchant, as Special Master, and he is hereby directed to ascertain and determine which of the abutting owners in Highway Improvement District H-503 have paid the assessment liens and which have not; that said Special Master shall report to the Court within 60 days from the date of this order his recommendations as to the persons to whom refunds should be made for the amounts which the City has received on account of said special assessment liens and the date on which, if any, interest on repayments should be charged against the City, together with a statement of the persons whose liens have not been paid and the method by which cancellation of such liens should be effected.

3. The said Special Master shall also recommend to this Court what attorneys fees should be allowed to the attorneys for the plaintiffs, and the method by which the payment of such fees shall be accomplished, both with respect to the parties who have paid their liens and those who have not.

[fol. 29] 4. This decree is final as to the determination of the invalidity of the special assessment liens as hereinabove set forth. Jurisdiction is retained for the purpose of entering such further orders as may be necessary to carry out the further provisions of the decree.

Done and Ordered in Chambers at Miami, Florida, this 17 day of February, 1954.

/s/ Marshall C. Wiseheart, Circuit Judge.

IN THE CIRCUIT COURT FOR DADE COUNTY

NOTICE OF APPEAL IN CASE NO. 167798-G

The defendant The City of Miami, a Municipal Corporation, existing under the laws of the State of Florida, by and through its undersigned attorneys, takes and enters its appeal to the Supreme Court of Florida to review the final decree of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, bearing date the 17th day of February, 1955, entered in the above styled cause and recorded in the records of said Court in Book 1171, page 362, and all parties to said cause are called upon to take notice of the entry of this appeal.

J. W. Watson, Jr., City Attorney, Robert M. Haverfield, Assistant City Attorney, Attorneys for Defendant City of Miami, a Municipal Corporation. By Robert M. Haverfield, Of Counsel.

(Certification of delivery omitted)

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[fol. 30]

IN THE CIRCUIT COURT FOR DADE COUNTY

CITY OF MIAMI'S ASSIGNMENTS OF ERROR IN CASE NO. 167798-G

Comes Now The City of Miami, a Municipal Corporation existing under the laws of Florida, within less than ten (10) days from the filing of the Notice of Appeal herein, and assigns the following as error upon which it intends to rely in the Supreme Court of Florida, for the reversal of the Final Decree entered February 17, 1955 herein, as follows, to wit:

* * * * * * *

3. The Chancellor erred in finding that the Notice of Hearing of Objections to the Confirmation of the Resolution ordering Highway Improvement District H-503 was insufficient as a matter of law.

4. The Chancellor erred in finding that the Notice was insufficient because it was inserted in the classified section of the "Miami Herald".

5. The Chancellor erred in finding that any reasonable person was not put upon notice that their property was to be specially assessed.

* * * * * * *

[fol. 31]

J. W. Watson, Jr., City Attorney, Robert M. Haverfield and John H. Smith, Assistant City Attorneys, Attorneys for Defendant City of Miami, a Municipal Corporation, By Robert M. Haverfield, Of Counsel.

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IN THE CIRCUIT COURT FOR DADE COUNTY

ORDER OF CONSOLIDATION—April 22, 1955

This Cause having come on for final hearing and the Court having consolidated the above cause with that certain Chancery case of Norton R. Ganger and L. C. Bethart, et al., Plaintiffs, against The City of Miami, a Municipal Corporation, etc., Defendant, No. 167798-G, in and for Dade County, [fol. 32] and the said causes having been heard as consolidated, thereby resulting in one Record for both causes, and Notices of Appeal having been filed in both causes by the defendant The City of Miami, and the Court being fully advised in the premises, it is

Ordered, Adjudged And Decreed that the original Record shall constitute the Record on Appeal in both causes in accordance with Rules 33(1) and 34(7) of the Florida Supreme Court Rules adopted July 19, 1954, effective March 15, 1955.

Done And Ordered in Chambers at Miami, Florida, this 22nd day of April, 1955.

Marshall C. Wiseheart, Circuit Judge.

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1957 En Banc

Case No. 28,057

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THE CITY OF MIAMI, a Municipal corporation in Dade County, existing under the laws of the State of Florida, Appellant,

vs.

NORTON R. GANGER and L. C. BETHART, et al., Appellees.

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OPINION Filed January 30, 1957

THOMAS, J.:

The appellant by resolution created a Highway Improvement District, published a notice that at a designated time "objections would be heard to the confirmation of such [fol. 33] resolution," to quote from the decree, and subsequently improved a certain street described in the resolution and the notice by applying a one-half inch "leveler" course and a one inch surface course. The base of the street and the curbs and gutters were not disturbed. In other words, the city resurfaced the existing street and undertook by the resolution to charge the cost, except for improving the intersections, to the abutting owners.

The judge decided that the notice was insufficient and that the appellant lacked the authority to impose the cost of an improvement of this nature upon the property owners. He appointed a master to ascertain what amounts had been paid by the various owners on the liens that had been filed to secure payment of the assessments, evidently with the view of later ordering the owners reimbursed.

We will detail the reasons for the rulings as we discuss the questions presented in the briefs.

The appellant claims that authority for the procedure was granted by Sec. 56 of the city charter, Chapter 10847, Laws of Florida, Special Acts of 1925, as amended. In that act we find that the city has the power to grade, pave, re-

pave, macadamize and remacadamize streets and specially assess the cost against adjacent property. Improvements and the eventual assessments are initiated by resolution of the city commission defining the termini and routes and the character of the work proposed.

After adoption of the resolution, plans and specifications for the work showing the estimated cost are prepared by the manager and filed with the city clerk. When these are filed, the clerk is required to publish "once in a daily newspaper of general circulation" a notice that at a meeting of the commission "on a certain day and hour" objections of interested persons to the confirmation of the resolution will be heard. The notice must contain, though it may be in brief or general terms, the description and location of the [fol. 34] improvement and a statement that plans, specifications and estimates have been filed.

So to generate the power vested by the statute, the resolution must be adopted, and to secure due process to those who must pay the cost, or whose property will be responsible for it, the notice defined in the law must be given.

The notice involved in the instant litigation follows: "All interested will take notice that at a meeting of the City Commission at 9:30 o'clock A. M. December 3rd, 1952, their objections will be heard to the confirmation of Resolution No. 25006, adopted November 19th, 1952 ordering paving improvements on South Miami Avenue, from S. W. 15th Street Road to 200' more or less south of Alatka Street, designated improvement H-503.

"Plans, specifications and estimate of cost of said improvements are on file in the City Clerk's office.

F. L. CORRELL
November 22, 1952. City Clerk."

When we place side by side the relevant section of the charter and the notice we have fully quoted, it is plain to us that the latter contained all elements required by the statute. It was published once in a newspaper of general circulation, The Miami Herald; it carried the date and hour of the meeting of the city commission at which complaints would be entertained; it contained a brief general descrip-

tion of the location where the improvement would be made; and it included the statement that the plans, specifications and estimates had been filed with the clerk.

The appellees seem to have convinced the circuit court that there were five defects rendering the notice insufficient: (1) failure to mention the place, that is, the city, where the objections would be heard, (2) absence of the name of the city commission which would hear them, (3) omission of the [fn. 3] name of the city where the streets lay; (4) want of identity of the signatory; (5) insertion of the notice in the classified section of the Herald.

The law only requires that persons interested be notified that protests will be heard at a meeting of the commission, and that the day and hour the commission will meet for the purpose be shown. No mention is made about naming in the notice the place where the commission would hold the particular meeting.

It seems to us that an interpretation that a property owner who wished to object to the proceeding would not be sufficiently informed to be able to locate a meeting of the commission of the city of Miami would be far-fetched. We have the same view about the complaint that the commission that would hear the complaints was not named. In the description of the street appears the familiar title "South Miami Avenue," and the notice appeared in The Miami Herald. We apprehend that few citizens of this state and no owners of property in Miami at all, especially on Miami Avenue between S. W. 15th Street and the vicinity of Alatka Street, would be unaware that these titles pertain to that city. We conclude that anyone purchasing an edition of the Herald and reading the notice would be fully conscious of the nature, place and purpose of the meeting.

Our reaction to the next two so-called imperfections, lack of identity of the city and the signer of the notice, is the same for the same reasons.

As for the position in the paper, among the classified advertisements, we simply say that the publication is the test and that there is no requirement that the notice shall appeal (sic) in any special section of the newspaper. Actually the notice did not appear under the caption "CLASSIFIED INFORMATION" but immediately above it was the title

"LEGAL NOTICES." We think this position was quite appropriate.

[fol. 36] "The purpose of notice under proceedings of this kind is to secure to the owner the opportunity to protect his property from the lien of the proposed tax * * * and, in order to be effectual, it should be so full and clear as to disclose to persons of ordinary intelligence *in a general way* what is proposed and when and where property owners may be heard." (Italics supplied.) Escott v. City of Miami, 107 Fla. 273, 144 So. 397.

We consider that the notice substantially conformed to the statute and that any protestant was advised when he could appear and where he could get full information about the contemplated work inasmuch as the plans, specifications and estimates were shown to be on file in the clerk's office and to relate to a certain numbered resolution dealing with improvement of a stated street.

On the matter of the validity of the notice we must disagree with the chancellor, and by disagreeing, we cannot adopt the view that the property owners could ignore the notice and at this late date successfully attack the action of the city, on the ground that due process had not been afforded them.

The chancellor thought that "resurfacing was necessary to keep the street in repair and facilitate the flow of traffic" and that the "work was for the benefit of the general public, and the abutting owners received no special benefit."

We can understand the potency of an argument that once a street is paved the cost of maintaining it should be borne by the public. Although we cannot agree that keeping a street in good repair is of no special benefit whatever to the property it bounds, we think that the power to maintain and assess the cost to adjacent property must be found in the charter, and in our search we have not discovered that the municipality was granted the power to "resurface" and assess the costs as in the case of original or new construction. There is no doubt that the city could grade, [fol. 37] pave and macadamize and it is clear from the use of the prefix "re" that grading, paving and macadamizing could be done again or anew and liens placed on the

property to cover the cost. Presumably a street could so deteriorate that it would be necessary to repeat the work that had made it a graded, paved or macadamized way for the use of vehicles. But we agree with the circuit judge that "surfacing" is not a synonym of the other gerunds used in the act. Definitions of the words "surface" and "surfacing" appearing in available dictionaries indicate that they describe a face or covering of a body as distinguished from the other dimensions. To surface, according to one authority, is to make smooth, or put a surface on, such as "surface a road." Thorndike-Barnhart dictionary. The total application consisted of a coating an inch and a half in thickness, and when this work is considered with the nature of a street, it seems to us that the circuit judge was not illogical in his holding that the layers were to make smoother a street worn by traffic, and that the improvement was in effect maintenance as distinguished from construction or *re*construction.

In conclusion we state that the word "resurfaced" was not the choice of the circuit judge. The relevant part of the resolution was that a certain street be "resurfaced * * * with approximately ½" leveling course and 1" surface course of asphaltic concrete * * * ." To do the work was within the power of the city; to assess it against abutting property was without such power.

The city had no inherent right to levy special assessments; such power could have been invested in it only by the legislature. City of Coral Gables v. Coral Gables, Inc., 119 Fla. 30, 160 So. 476. The power to assess for what was obviously repairs was lacking. The assessments were, therefore, void. The payment of assessments by some of the [fol. 38] owners would not operate as an estoppel because that doctrine is inapplicable when an assessment is void. Gulf View Apartments, Inc., et al. v. City of Venice, 108 Fla. 41, 145 So. 842. The appellees were entitled to the relief they sought and were granted.

Affirmed.

TERRALL, C.J., and ROBERTS, J., concur
THORNAL, J., concurs specially
HOBSON, DREW and O'CONNELL, JJ., dissent

THORNAL, J., Concurring Specially:

I concur in the judgment of affirmance. I agree with all of the opinion of Mr. Justice Thomas save that portion which in effect holds that the City Charter did not authorize the levy of an assessment for special benefits to particular property which might result from the "re-surfacing" of a street. In my view, authority to assess the cost of "re-macadamizing" a street is tantamount to authority to assess for "re-surfacing" a street. However, in order to justify the assessment the improvement must redound to the special benefit of the property that is being assessed. Utley v. City of St. Petersburg, 107 Fla. 6, 144 So. 58; Fisher v. Board of County Commissioners of Dade County (Fla. 1956), 84 So. 2d 572.

Here the trial judge specifically found that "the work was for the benefit of the general public, and the abutting owners received no special benefit." The record abounds in evidence more than adequate to sustain this conclusion.

For the foregoing reasons and the reasons announced by Mr. Justice Thomas on the other points, I would affirm the decree.

DREW, J., dissenting in part:

I agree with that portion of the opinion of Mr. Justice Thomas holding that the original notice of the City of Miami of its intention to construct and install the im- [fol. 39] provements which are the subject matter of this litigation was valid and effectual but I must respectfully dissent from the affirmance of the decree appealed from which holds these assessments to be invalid and void. I am impelled to this conclusion for two basic and fundamental reasons.

It is stated in the opinion of Mr. Justice Thomas "Although we cannot agree that keeping a street in good repair is of no special benefit whatever to the property it bounds, we think that the power to maintain and assess the cost to adjacent property must be found in the charter, and in our search *we have not discovered that the municipality was granted the power to 're-surface' and assess the costs* as in the case of original or new construction." I cannot

agree with this statement. Section 56 of the city charter authorizes special assessments for highway improvements which the act says embraces "the grading, paving, *repaving*, macadamizing and *remacadamizing* of highways * * * ." I don't see how the Legislature could have more clearly vested the power in the city to do the very work covered by the resolution and to make such assessments therefor against the abutting property in proportion to the benefit it receives. I think it is pertinent to note that the opinion of Mr. Justice Thomas concedes that such work was beneficial to the abutting property. The results reached turn squarely on the proposition, as I view it, that the city lacked authority to do the work which afforded the basis of the special assessment.

The words "macadamizing" and "remacadamizing" embrace the identical subject as "surfacing" or "resurfacing." "Macadamizing" a road merely contemplates or embraces a layer or surface over the rock, stone or cement which constitutes the road itself. "Macadamizing" is sometimes referred to as "slag" but may be any substance covering the top or surface of the road put there for smoothness or [fol. 40] safety. Webster's Collegiate Dictionary, Fifth Edition, describes "macadamize" as "to construct or finish a raod (sic) by packing a layer of small broken stone on a convex well-drained earth roadbed." "Macadam", according to the foregoing authority, is the "broken stone used in macadamizing." In 54 C.J.S. 890, "macadamize" is described as follows: "While it has been observed that the meaning of the word 'macadamize' is susceptible of variation, according to the particular relation in which it is employed, it is said to have a fixed and definite meaning. It has been defined as meaning to cover a road or path with small broken stones, which uniting by pressure form a smooth hard surface; to cover, as a road, way, or path, with small stones, so as to form a smooth laid surface: to cover as a roadway surface; to cover a street or road by the process introduced by Macadam, which consists of the use of small stones, of a uniform size, consolidated and leveled by heavy rollers. The term may refer not only to the kind of material to be used in covering a street or road, but also the manner in which it is to be laid."

Moreover, the pertinent portion of Section 56 of the city charter clearly and unequivocally authorizes special assessments not only for grading, paving, macadamizing of highways in the beginning but also authorizes a special assessment where it is necessary to repave or remacadamize. I don't see how the act could be any clearer with reference to this subject nor how one would go about the preparation of such a provision for inclusion in a city charter which would make it any clearer than that contained in Section 56.

Nor can the words of Section 56, viz. "pave and repave" be ignored. In essence these words mean to produce or reproduce a smooth surface so that "repave" and "resurface" would be indistinguishable within the intent and clear [fol. 41] language of the act. See 76 C.J.S. p. 1175, especially test to note 30 and 54 C.J., 401. Cf. McDonald v. Fraleigh, 86 Fla. 577, 98 So. 830, (1923).

Another basic and fundamental reason why I cannot agree to the result reached by the trial court and approved by the foregoing opinion which holds these assessments to be void is the failure of the appellees to act promptly in the matter.

Holding as we do that the original notice of the intention of the City of Miami to install these improvements and assess a portion of the cost against the abutting property was valid in all respects, the failure of the appellees to promptly assert their rights in the premises now estops them from maintaining an action, the ultimate objective of which is to declare the assessments invalid. It was the duty of the appellees to promptly assert their position when the City obtained jurisdiction of the improvement by virtue of the passage of the initial resolution and the giving of what we hold to be a valid and legal notice.

While all of the decisions of this Court may not be completely reconciled on this question, our latest expression in the case of Rosche v. City of Hollywood, 55 So. 2d 909 (Fla. 1952), clearly answers this contention adversely to the contention of appellees. In that case we made the following unequivocal holding:

> "'The defendant city also contends that plaintiffs are estopped to maintain this action for the cancella-

> tion of the special assessments for the improvements on these streets. This point, in my opinion, is well taken. Plaintiffs had direct notice of the ordinances providing for street improvements; they saw the pavement being put down and were well aware that part, or all of the cost thereof, would have probably been [fol. 42] assessed against their properties. They stood idly by when they could have filed their protests with the City Commission, or could have resorted to a Court of Equity to restrain the paving of the streets, and the levying of the assessments thereon. They remained silent for two years after the City became liable for the cost of the paving of the Streets and did nothing. Having failed to avail themselves of any of the remedies provided for their protection under the laws of Florida, and not having shown fraud or bad faith on the part of the City Commissioners in making the assessments, they should now be held to be estopped to do so. It, therefore, follows that the exceptions to the Special Master's report should be sustained and the bill of complaint dismissed."

Any other conclusion would be disastrous to the fiscal affairs of the city and could well result in municipal bankruptcy.

It is stated in the foregoing opinion of Mr. Justice Thomas: "The payment of assessments by some of the owners would not operate as an estoppel because that doctrine is inapplicable when an assessment is void." As authority for that statement the case of Gulf View Apartments, Inc., et al. v. City of Venice, 108 Fla. 41, 145 So. 842 is cited. In the cited case, however, the property owner waited nearly two years after the assessment was made to institute a suit to set it aside and the court there held, as it did in Rosche v. City of Hollywood, supra, that under the circumstances shown by the record in that case and because objections were not seasonably filed, the owner was estopped to question the validity of the assessment. The property owner in that case had never paid any portion of the assessment and the only reference in the opinion concerning estoppel in instances where the assessment is

[fol. 43] wholly void is the gratuitous statement "We are conscious of the rule to the effect that the doctrine of estoppel has no application where an assessment is void." In the companion case of City of Miami v. Hamilton, et al., now also under consideration by us, it appears that some of the property owners have paid either all or a portion of these assessments and the court in its decree has retained jurisdiction with reference to these payments, obviously for the purpose of later providing for their repayment by the city to the property owners. It is extremely doubtful even in the case of a void assessment whether the property owner may recover such assessment even though he may not be estopped from denying his liability for the balance. McQuillin on Municipal Corporations, (3rd Ed.), Vol. 14, Sec. 38.194.

I, therefore, respectfully dissent and would reverse the decree appealed from.

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IN THE SUPREME COURT OF FLORIDA

Case No. 28,058

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CITY OF MIAMI, a municipal corporation in Dade County, existing under the laws of the State of Florida, Appellant,

vs.

THOMAS B. HAMILTON, et al., Appellees.

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OPINION Filed January 30, 1957

An Appeal from the Circuit Court for Dade County, Marshall C. Wiseheart, Judge.

PER CURIAM.

Affirmed on authority of The City of Miami v. Norton R. Ganger and L. C. Bethart, et al., filed this date.

TERRELL, C.J., THOMAS, ROBERTS and THORNAL, JJ., concur
HOBSON, DREW and O'CONNELL, JJ., dissent

DREW, J., dissenting:

I respectfully dissent for the reasons stated in City of Miami v. Norton R. Ganger and L. C. Bethart, et al., opinion filed this date.

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[fol. 44]

IN THE SUPREME COURT OF FLORIDA

PETITION FOR REHEARING IN CASE NO. 28,057

To the Honorable Justices of the Supreme Court of the State of Florida:

Petitioner, City of Miami, a municipal corporation existing under the laws of the State of Florida, files this its petition for rehearing respectfully requesting this Honorable Court to reconsider its Opinion filed in this cause January 30, 1957, affirming the decree of the lower court. As grounds for rehearing Petitioner suggests the following:

1. That Justice Thornal Concurring Specially overlooked or failed to consider that appellees disregarded or ignored their remedies as provided by the legislature to question the benefits of the assessments and that therefore they waived their right and are estopped to question benefits in a subsequent action. This Court has so held in a long line of decisions. See: *Summerland* vs. *City of Punta Gorda*, 101 Fla. 543, 134 So. 611; *Rosche* vs. *City of Hollywood*, 55 So. 2d 909; *Escott* v. *City of Miami*, 107 Fla. 273, 144 So. 397; *City of Hollywood* v. *Davis*, 19 So. 2d 111.

The facts of the instant case make the principles of law in the case of *Fisher* v. *Board of County Commissioners of Dade County* (Fla. 1956), 84 So. 2d 572 inapplicable, for the Fisher case involved the validity of a bond issue where the proceeds of the sale of the bonds, if valid, was to be used for paving and drainage. The improvements were not yet constructed and action was timely taken by the taxpayer.

In the case at bar, the appellees failed to comply with the procedure as provided in the City Charter for raising the questions of benefits or to maintain subsequent action as provided in the Charter and they are therefore now estopped from raising the question of benefits. The Commis-

sion of the City of Miami is the legislative body of said City [fol. 45] and its legislative determination of benefits is conclusive in absence of fraud or bad faith or timely petition. See: Point Two of Appellant's Brief, pp. 17 to 22.

See also: Section 56 (N) of the Charter of the City of Miami and Section 129 of the Charter of the City of Miami which read as follows:

> "Sec. 129. Same— When confirmation of assessment roll conclusive.
>
> "The confirmation of an assessment roll by the commission under paragraph (q) of section 56 of the charter shall be final and conclusive as to the assessment against each lot and parcel assessed unless proper steps be taken within twenty (20) days in a court of competent jurisdiction to secure relief. (C. 14229, Acts 1929.)"

In this connection Justice Thornal overlooked or failed to consider that if, in making special assessments, due notice was accorded the property owners by the City of Miami as required by the Charter as held in the opinion of Justice Thomas, then in that event all provisions of organic law that pertain to due process were complied with. We find the law in Florida and elsewhere to be that when this requirement has been met the assessed property owners are also compelled to meet the requirements of the Charter with respect to the time and manner of questioning benefits or any other right afforded them by law, See: *Anderson* v. *City of Ocala,* 67 Fla. 204, 64 So. 775, 52 L.R.A. (N.J.) 287.

2. The Court in its opinion by the Honorable Justice Thomas in arriving at its decision overlooked or failed to consider that the City of Miami had the Charter power to "*re-surface*" under the provisions of Section 56 of the City Charter, Chapter 10847, Laws of Florida, Special Acts of 1925, as amended, *and to assess therefor.*

In said Section 56 under a paragraph entitled, "*Class 1.*" the City had the power to do the following:

> ". . . grading, paving, re-paving, macadamizing and re-macadamizing of highways. . . ."

[fol. 46] *and to assess therefor.*

Under Section 117 of said Charter an additional definition of what is embraced is set forth and this reads as follows:

"Sec. 117. Same— What embraced in highway improvements.

"Highway improvements made under section 56 of the city charter may include sanding and oiling of highways as all or a part of any such improvements. (C. 14229, Acts 1929)."

It is our contention that the words in Section 56 of the Charter, "grading, paving, re-paving, macadamizing and re-macadamizing of highways", as well as the words of Section 117 of "sanding and oiling of highways" includes "*surface or re-surface.*"

We predicate this conclusion not only upon legal definitions but engineering as well for these terms are engineering in nature.

In *Heofer* v. *Milwaukee* (Wis.) 143 N.W. 1038, 1040, it was held that the word "pavement" includes all things necessary to make a level *surface* for horses and foot passengers of any convenient material and all necessary excavation or filling to prepare the *surface* and the removal of obstacles as well as laying and paving stones or other *surface* material.

In the case of State Highway Commission v. Coahoma County, (Miss.) 32 So. 2d 555, 561, the phrase "pavement on the highway" was meant to include whatever "was necessary to put the old unpaved highway in order to make it a modern paved highway—it meant that which was necessary to do in order to convert the old unpaved highway into a modern paved highway . . ."

Elliott on Roads and Streets, p. 617, defines pavement as:

"Pavement is not limited to uniformly arranged masses of solid material, or blocks of wood, brick, or stone, but it may as well be formed of pebbles, or gravel, or other hard substances which will make a compact, even, hard way or floor."

[fol. 47] It would appear from a casual inspection of the foregoing citation that the making of a "compact even, hard way or floor" is making a *surface*.

*If the City has the power to pave and re-pave, then certainly by the foregoing definitions we submit that is tantamount to the power to surface and re-surface.*

In the case of Mobile v. Mobile Light Co. (Ala.) 38 So. 127, the Court in its opinion by way of obitor (sic) dictum expressed the opinion that paving is not limited to merely the preparation of the foundation for the reception of the pavement but include curbing and certain kinds of drainage as well.

In *Pearce, et al., v. Courillon, Tax Collector*, (La.) 113 So. 301, the Court in its opinion used the words "*surface of pavement*" interchangeably as synonymous.

For the benefit of the Court we cite the following concerning engineering definitions:

Highway Engineering, (Ritter & Paquette) p. 387

"The principal elements of (flexible pavement) structure are shown to be the pavement of "*wearing surface*," base, and subgrade.

"Page. 453: Macadam Roads—Chapt. 14. The term 'macadam', as applied to roads in the United States at the present time, has come to *mean road surfaces and bases* which are constructed of crushed or 'broken' stone fragments cemented together by the action of traffic or rolling and water. This term is also applied to *broken-stone surfaces and bases* in which the aggregate particles are bound together by Portland cement or bituminous materials.

"Page 455: By 'treated' macadam is generally meant construction involving the use of a macadam base course covered by a *bituminous wearing surface of some type*.

* * * * * * *

"Two of these types are of considerable prominence in modern highway practices. These types are the water-bound macadam, which is generally used in

the construction of bases, and bituminous macadam, which is used both in *base and surface construction*. The bulk of the following discussion will be devoted to these two types. Traffic-found macadam surfaces are still used in certain sections, particularly in the construction of certain secondary roads, and a very [fol. 48] few states use this type of macadam as a step in stage construction, the wearing surface becoming a base for a bituminous wearing *surface* after it has been satisfactorily compacted under traffic action.

"Page 458: Water-Bound Macadam—As has been indicated, water-bound macadams are *road bases* (*or surfaces*) which are constructed from crushed slag, cemented together by stone or slag dust, and water. Limestone or dolomite are generally preferred when crushed stone is used because the dust produced by the crushing of these materials has some natural cementing properties. Many other types of stone have been used successfully however, including granite, traprock, and similar hard stones, and such relatively soft materials as limerock. Crushed and uncrushed gravels have also been used in this type of construction. Water-bound macadams are constructed in thicknesses ranging from about 3 to 12 inches depending on the purpose for which they are intended. Their principal use is as bases for flexible pavements, although their use as surface courses is permitted in some states. In almost all cases water-bound macadam layers are covered with a bituminous *wearing surface* of some sort soon after their construction, and the following discussion is primarily based on the assumption that the water-bound macadam will serve as a base course. Where the thicknesses of the completed macadam is to be more than about 6 inches, it is generally constructed in two or more courses."

We submit that by the foregoing the Court overlooking or failing to consider the Charter powers herein cited as

well as the definitions of the terms contained therein the majority opinion of the Court written by Justice Thomas is in error.

Wherefore, Appellant prays that a re-hearing be granted and that the opinions of the majority of this Court be reconsidered and that a decision of this Court be rendered for the Appellant reversing the Chancellor.

Respectfully submitted,

Olavi M. Hendrickson, City Attorney, Robert M. Haverfield, Special Counsel, John H. Smith, Assistant City Attorney, By John H. Smith, Counsel for Petitioner.

(Certification of delivery omitted.)

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[fol. 49]

IN THE SUPREME COURT OF FLORIDA

PETITION FOR REHEARING IN CASE NO. 28058

To the Honorable Justices of the Supreme Court of the State of Florida:

Petitioner, City of Miami, a municipal corporation existing under the laws of the State of Florida, adopts and files in this cause that Petition for Rehearing as filed in the case of The City of Miami, a Municipal corporation, Appellant vs. Norton R. Ganger and L.C. Bethart, et al., Case No. 28,057.

Respectfully submitted,

Olavi M. Hendrickson, City Attorney, Robert M. Haverfield, Special Counsel, John H. Smith, Assistent City Attorney.

By /s/ John H. Smith, Counsel for Petitioner.

(Certification of delivery omitted.)

IN THE SUPREME COURT OF FLORIDA

ORDER GRANTING PETITION FOR REHEARINGS May 10, 1957

The order entered in the above cause on May 8th is amended so as to read as follows:

The attorneys for appellant have filed a petition for rehearing in this cause and the same having been duly considered, it is ordered that said petition be and the same is hereby granted and the cause is set down for reargument at 9:00 o'clock a.m. on Monday, May 27th, 1957, before the Court en banc.

[fol. 50] The order entered in the above cause on May 8th is amended so as to read as follows:

The attorneys for appellant have filed a petition for rehearing in this cause and the same having been duly considered, it is ordered that said petition be and the same is hereby granted and the cause is set down for reargument at 9:00 o'clock a.m. on Monday, May 27th, 1957, before the Court en banc.

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IN THE SUPREME COURT OF FLORIDA

Case No. 28,057

An Appeal from the Circuit Court for Dade County, Marshall C. Wiseheart, Judge.

OPINION ON REHEARING GRANTED—Filed October 11, 1957

DREW, J.

The answer to the question of whether the City had the power to repair the streets in the manner described in the opinion by Mr. Justice Thomas and to assess a portion of the cost thereof against the abutting property owners is found in the clear and unequivocal language of Section 56 of the city charter.[1] This legislative act provides "A local improvement is an improvement defined by this section and made under the provisions hereof." It further describes the classes of improvements "authorized to be [fol. 51] made under the provisions of this act." There are five classes of improvements so designated but for the pur-

[1] Ch. 10847, Special Acts of 1925.

pose of this discussion, we need concern ourselves directly only with class one. The following is the exact language of the city charter describing an authorized improvement under the act for which special assessments for benefits may be made.

> "Class 1. Highway improvements embrace the grading, paving, *re-paving,* macadamizing and *re-macadamizing* of highways, with necessary drainage, sewer inlets, manhole and catch basins and, if the Commission so orders, may embrace curbs and gutters." (Emphasis supplied)

There are many significant words in this quotation. The first word is "improvement". This clearly symbolizes making better something which already exists. Webster, among other things, defines "improvement" as "betterment" and "state of being improved". The language of the act provides not merely for grading, paving and macadamizing a street but also uses the words "re-paving" and "re-macadamizing". This is a clear legislative grant of power to do exactly what was done in the instant case. It is difficult to understand what words the Legislature could have used which would more clearly have vested the power in the City to do the work covered by the resolution and make assessments therefor against the abutting property. The words "macadamizing" and "re-macadamizing" embrace the identical subject as "surfacing" or "re-surfacing". "Macadamizing" a road merely contemplates or embraces a layer or surface over the rock, stone or cement which constitues (sic) the road itself. "Macadamizing" is sometimes referred to as "slag" but may be any substance covering the top or surface of the road put there for smoothness or safety. Webster's Collegiate Dictionary, Fifth Edition, describes "macadamize" as "to construct or finish a road by packing a layer of small broken stone on a convex well-drained earth roadbed." "Macadam", ac- [fol. 52] cording to the foregoing authority, is the "broken stone used in macadamizing." In 54 C.J.S. 890, "macadamize" is described as follows: "While it has been observed that the meaning of the word 'macadamize' is susceptible of variation, according to the particular relation

in which it is employed, it is said to have a fixed and definite meaning. It has been defined as meaning to cover a road or path with small broken stones, which uniting by pressure form a smooth hard surface; to cover, as a road, way or path, with small stones, so as to form a smooth laid surface; to cover as a roadway surface; to cover a street or road by the process introduced by MacAdam, which consists of the use of small stones, of a uniform size, consolidated and leveled by heavy rollers. The term may refer not only to the kind of material to be used in covering a street or road, but also the manner in which it is to be laid." Moreover the words used in the quoted section of the city charter "pave and re-pave" are of significance to this discussion. In essence these words mean to produce or re-produce smooth surface so that "re-pave" and "re-surface" would be indistinguishable within the intent and clear language of the act. See 76 C.J.S., p. 1175, especially text to note 30 and 54 C.J. 401 C.F. McDonald v. Fraleigh, 86 Fla. 577, 98 So. 830 (1923). It may not appeal to some to allow a city to assess for the cost of re-paving or re-surfacing a street but it is unquestionably within the power of the Legislature to authorize such to be done. We re-iterate that such power could hardly have been vested in language of clearer import and meaning than that contained in the city charter.

Holding then, as we unanimously do, that the notice discussed in the opinion by Mr. Justice Thomas was in all respects regular and in full compliance with the provision of the city charter relating to special assessments for benefits, we now direct our attention to the requirements placed by the law upon the property owner if he desires [fol. 53] to contest the regularity of the proceedings, the power of the city to make the assessments or the amount of the assessments determined to be chargeable against the respective parcels of land.[2]

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[2] The resolution authorizing the work and establishing the highway improvement tax district was adopted November 19, 1952. This suit in equity was commenced April 1, 1954.

The resolution was approved by the City Commission after a hearing on December 3, 1952 at which no objections were offered.

Bids were advertised for, contracts awarded and the improvements completed. The Clerk published notice prior to a hearing

This is not the first time this section 56 of the city charter has been before this Court; nor is it the first time we have had occasion to deal with the duty and responsibility of the property owner to promptly object to the city commission if he has a grievance with reference to a proposed improvement. In Escott v. City of Miami, 144 So. 397 (Fla. 1932), in speaking of this identical section of the city charter, after holding the original notice to have been validly given, we said:

> "If the property owner had notice, and in this case we have held that he did have, his *only* method of questioning any error or irregularity in the proceedings was by filing objections before the city commission, and, if overruled there, by filing his special appeal to the circuit court, in the manner provided by the charter.
>
> "Where a property owner has an opportunity given him, under a statute providing for special assessments for local improvements, to appear and contest the question before the local authorities whose duty it is [fol. 54] to pass upon objections, *their determination on the subject of benefits is final, and, if he fails to avail himself of the opportunity provided by the statute, he thereby admits the finality of the determination, and is estopped to raise the question in subsequent proceedings, such as by suit in equity to enjoin the enforcement of assessments which have become conclusive under the statute.*" (emphasis supplied)

See also Rosche v. City of Hollywood, 55 So. 2d 909 (Fla. 1952) and Summerland, Inc. v. City of Punta Gorda, 134 So. 611 (Fla. 1931).

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on June 3, 1953, where no objections were made to the improvements, and they were then accepted.

After a preliminary tax roll had been prepared, the clerk published notice of a hearing on February 3, 1954 for objections to confirmation of the roll. At the hearing, where there were no objections, the City Commission confirmed the assessments, finding: "That the sums and amounts assessed against each of the lots or parcels of ground in said preliminary rolls are less than the amount that each of the said lots or parcels of ground is especially benefited by said improvement and that such amounts are in proporation to the special benefits that the property received. . . ."

Section 56 of the charter of the City of Miami provides in detail the steps to be taken by the City officials in authorizing public improvements, the cost of which are to be paid in whole or in part by the owners of the land abutting said improvements and especially benefited thereby. The various notices required to be published are for the purpose of advising the property owners affected of the nature and extent of the improvements, the extent of the assessments to be made against the land to be especially benefited thereby and the details of such construction so that the affected property owners may be fully advised as to what is contemplated, the approximate cost of the improvement and the approximate amount to be ultimately assessed against the affected property. These requirements of the charter serve not only to protect the property owner by giving him notice of contemplated improvements so that he may take timely action either before the City commission or in the courts to protect his interest in the matter but it serves also to afford the municipal government the opportunity of financing such improvements and a means of setting in repose questions of the validity of such proceedings and the assessments to be made pursuant thereto. Such proceedings serve much the same purpose as validation proceed- [fol. 55] ings under Chapter 75, F.S.A. Both are necessary to the efficient and orderly financing of civic improvements and are a necessary adjunct of fiscal management. It would be disastrous to the fiscal affairs of the City and detrimental to the general welfare of its citizens if the validity of such assessments was constantly open to question. The orderly administration of the affairs of the city require that the property owner make timely objection and it imposes no undue burden on him to do so. We specifically pointed out in Summerland, Inc. v. City of Punta Gorda, supra, that a property owner who stands by and permits a public improvement to be made to the benefit of his property under authority of a tribunal vested with the power to levy such assessment may be estopped from raising objections thereto by sleeping on his rights and not promptly asserting them even though had they been timely raised, such objections might have rendered the assessment invalid. The failure of the property owners here to promptly assert

whatever rights they had or make any effort to comply with the applicable provisions of the city charter now estops them from questioning the validity or amount of these assessments.

I am authorized to say that Mr. Justice Hobson, Mr. Justice Thornal and Mr. Justice O'Connell concur in these views.

The judgment appealed from is reversed with directions to dismiss the complaint.

HOBSON, THORNAL and O'CONNELL, JJ., Concur.
TERRELL, C. J., THOMAS and ROBERTS, JJ., Dissent.

THOMAS, J., Dissenting:

The appellant by resolution created a Highway Improvement District, published a notice that at a designated time [fol. 56] "objections would be heard to the confirmation of such resolution," to quote from the decree, and subsequently improved a certain street described in the resolution and the notice by applying a one-half inch "leveler" course and a one inch surface course. The base of the street and the curbs and gutters were not disturbed. In other words, the city resurfaced the existing street and undertook by the resolution to charge and cost, except for improving the intersections, to the abutting owners.

The judge decided that the notice was insufficient and that the appellant lacked the authority to impose the cost of an improvement of this nature upon the property owners. He appointed a master to ascertain what amounts had been paid by the various owners on the liens that had been filed to secure payment of the assessments, evidently with the view of later ordering the owners reimbursed.

We will detail the reasons for the rulings as we discuss the questions presented in the briefs.

The appellant claims that authority for the procedure was granted by Sec. 56 of the city charter, Chapter 10847, Laws of Florida, Special Acts of 1925, as amended. In that act we find that the city has the power to grade, pave, re-pave, macadamize and re-macadamize streets and specially assess the cost against adjacent property. Improvements and the eventual assessments are initiated by

resolution of the city commission defining the termini and routes and the character of the work proposed.

After adoption of the resolution, plans and specifications for the work showing the estimated cost are prepared by the manager and filed with the city clerk. When these are filed, the clerk is required to publish "once in a daily newspaper of general circulation" a notice that at a meeting of the commission "on a certain day and hour" objections of interested persons to the confirmation of the [fol. 57] resolution will be heard. The notice must contain, though it may be in brief or general terms, the description and location of the improvement and a statement that plans, specifications and estimates have been filed.

So to generate the power vested by the statute, the resolution must be adopted, and to secure due process to those who must pay the cost, or whose property will be responsible for it, the notice defined in the law must be given.

The notice involved in the instant litigation follows: "All interested will take notice that a meeting of the City Commission at 9:30 o'clock A.M. December 3rd, 1952, their objections will be heard to the confirmation of Resolution No. 25006, adopted November 19th, 1952 ordering paving improvements on South Miami Avenue, from S.W. 15th Street Road to 200′ more or less south of Alatka Street, designated improvement H-503.

"Plans, specifications and estimate of cost of said improvements are on file in the City Clerk's office.

November 22, 1952.

F. L. Correll, City Clerk."

When we place side by side the relevant section of the charter and the notice we have fully quoted, it is plain to us that the latter contained all elements required by the statute. It was published once in a newspaper of general circulation, The Miami Herald; it carried the date and hour of the meeting of the city commission at which complaints would be entertained; it contained a brief general description of the location where the improvement would be made; and it included the statement that the plans, specifications and estimates had been filed with the clerk.

The appellees seem to have convinced the circuit court that there were five defects rendering the notice insufficient: (1) failure to mention the place, that is, the city, where the objections would be heard, (2) absence of the name of the city commission which would hear the, (sic) (3) omission [fol. 58] of the name of the city where the streets lay; (4) want of identity of the signatory; (5) insertion of the notice in the classified section of the Herald.

The law only requires that persons interested be notified that protests will be heard at a meeting of the commission, and that the day and hour the commission will meet for the purpose be shown. No mention is made about naming in the notice the place where the commission would hold the particular meeting.

It seems to us that an interpretation that a property owner who wished to object to the proceeding would not be sufficiently informed to be able to locate a meeting of the commission of the city of Miami would be far-fetched. We have the same view about the complaint that the commission that would hear the complaints was not named. In the description of the street appears the familiar title "South Miami Avenue," and the notice appeared in The Miami Herald. We apprehend that few citizens of this state and no owners of property in Miami at all, expecially (sic) on Miami Avenue between S.W. 15th Street and the vicinity of Alatka Street, would be unaware that these titles pertain to that city. We conclude that anyone purchasing an edition of the Herald and reading the notice would be fully conscious of the nature, place and purpose of the meeting.

Our reaction to the next two so-called imperfections, lack of identity of the city and the signer of the notice, is the same for the same reasons.

As for the position in the paper, among the classified advertisements, we simply say that the publication is the test and that there is no requirement that the notice shall appear in any special section of the newspaper. Actually the notice did appear under the caption "Classified Information" but immediately above it was the title "Legal Notices." We think this position was quite appropriate.

[fol. 59] "The purpose of notice under proceedings of this kind is to secure to the owner the opportunity to protect

his property from lien of the proposed tax * * * and, in order to be effectual, it should be so full and clear as to disclose to persons of ordinary intelligence *in a general way* what is proposed and when and where property owners may be heard." (Italics supplied.) Escott v. City of Miami, 107 Fla. 273, 144 So. 397.

We consider that the notice substantially conformed to the statute and that any protestant was advised when he could appear and where he could get full information about the contemplated work inasmuch as the plans, specifications and estimates were shown to be on file in the clerk's office and to relate to a certain numbered resolution dealing with improvement of a stated street.

All members of the court agree to the preceding opinion with reference to the sufficiency of the notice but the opinion which follows is that only of Terrell, C.J., Roberts, J., and the writer. Although we three cannot adopt the view that the property owners could ignore the notice and at this late date successfully attack the action of the city, on the ground that due process had not been afforded them, we believe that the property owners can assail the liens on the ground that the city did not have the power to create them under the circumstances.

The chancellor thought that "*resurfacing* was necessary to keep the street in repair and facilitiate the flow of traffic" and thah (sic) the "work was for the benefit of the general public, and the abutting owners received no special benefit."

We can understand the potency of an argument that once a street is paved the cost of maintaining it should be borne by the public. Although we cannot agree that keeping a street in good repair is of no special benefit whatever to the property it bounds, we think that the power to maintain and assess the cost to adjacent property must be found [fol. 60] in the charter, and in our search we have not discovered that the municipality was granted the power to "re-surface" and assess the costs as in the case of original or new construction. There is no doubt that the city could grade, pave and macadamize and it is clear from the use of the prefix "re" that grading, paving and macadamizing could be done again or anew and liens placed on the

property to cover the cost. Presumably a street could so deteriorate that it would be necessary to *re*peat the work that had made it a graded, paved or macadamized way for the use of vehicles. But we agree with the circuit judge that "surfacing" is not a synonym of the other gerunds used in the act. Definitions of the words "surface" and "surfacing" appearing in available dictionaries indicate that they describe a face or covering of a body as distinguished from the other dimensions. To surface, according to one authority, is to make smooth, or put a surface on, such as "surface a road." Thorndike-Bernhart dictionary. The total application consisted of a coating an inch and a half in thickness and when this work is considered with the nature of a street, it seems to us that the circuit judge was not illogical in his holding, based on the testimony of experts, that the layers were to make smoother a street worn by traffic, and that the improvement was in effect maintenance as distinguished from construction or *re*-construction.

In conclusion we state that the word "resurfaced" was not the choice of the circuit judge. The relevant part of the resolution was that a certain street be "resurfaced * * * with approximately ½" leveling course and 1" surface course of asphaltic concrete * * *." To do the work was within the power of the city; to assess it against abutting property was without such power.

The city had no inherent right to levy special assessments; such power could have been invested in it only by the legislature. City of Coral Gables v. Coral Gables, Inc., [fol. 61] 119 Fla. 30, 160 So. 476. The power to assess for what was obviously repairs was lacking. The assessments were, therefore, void. The payment of assessments by some of the owners would not operate as an estoppel because that doctrine is inapplicable when an assessment is void. Gulf View Apartments, Inc., et al. v. City of Venice, 108 Fla. 41, 145 So. 842. We three are convinced that appellees were entitled to the relief they sought and were granted.

Therefore we dissent.

Terrell, C.J., and Roberts, J., Concur.

IN THE SUPREME COURT OF FLORIDA

Case No. 28,058

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CITY OF MIAMI, a municipal corporation in Dade County, existing under the laws of the State of Florida, Appellant,

vs.

THOMAS B. HAMILTON, et al., Appellees.

---

An appeal from the Circuit Court for Dade County, Marshall C. Wiseheart, Judge.

PER CURIAM OPINION Filed October 11, 1957

Reversed on the authority of City of Miami v. Ganger, opinion filed this date.

Terrell, C.J., Thomas, Hobson, Roberts, Drew, Thornal and O'Connell, JJ., concur.

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IN THE SUPREME COURT OF FLORIDA

MOTION FOR LEAVE TO SUPPLEMENT RECORD ON APPEAL

The Appellees respectfully show that:

1. Subsequent to the oral argument herein, Appellees learned that the Appellant City had created at least two new Highway Improvement Districts H-508 and H-511. The work done in these districts is almost identical in [fol. 62] character with that done in Districts H-477 and H-503, which are involved in the above appeal. Certified copies of the proceedings relating to District H-511 and Resolution #27362 evidencing that the work done in District H-511 was not the subject of special assessments are attached to this motion.

2. The lower Court on Appellees' Motion, a copy of which is attached, in an order dated August 13th, 1956, permitted the Appellees to take the deposition of Appel-

lant's Finance Director, concerning the payment of the costs of District H-511.

3. The deposition of George N. Shaw, Director of Finance, for said City, was taken on August 23, 1956, pursuant to that order and is attached. This deposition reveals that the work in said districts was paid for from the proceeds of bonds issued by the City, and which bonds are payable out of the proceeds derived from a franchise given to the Florida Power & Light Company.

5. The policy of the City with respect to this and other work is reflected by a memorandum from the Director of Finance, reading as follows:

"Mr. G.N. Shaw, Director
Finance Department

June 1, 1956

Arthur E. Darlow, Director
Department of Engineering

H. 508 District Non Assessable

On December 20, 1955, a memorandum was directed to you advising that Highway Improvement District H-508 was to be an assessment district.

My attention has been called to the fact that the City Commission, at about the time this district was ordered, verbally declared all resurfacing work paid out of Florida Power and Light Bond Funds was *not* to be assessed.

Consequently after the district was ordered and confirmed, we purposely failed to adhere to the charter requirement of hearing objections to the completed work. This, in effect, made the district invalid as far as assessments were concerned.

Although pending liens exist against the District's properties, the City Attorney's office, upon being contacted to determine the method of removing the liens, deemed such action inadvisable at that time because of litigation of other districts of a similar nature.

[fol. 63] As soon as clearance is received from the Law Department, we will arrange to have the pending liens removed by Commission Action.

AED:MES:rp

cc: H-508
City Atty.
Design
Assessment"

6. It would be manifestly unfair for the City to be permitted to resurface such streets as South Miami Avenue and to charge the cost against the abutting owners and to resurface streets leading into South Miami Avenue and pay for the cost out of General Funds. This is the rankest sort of discrimination and completely refutes the contention of the Appellant as to the importance of this case upon other city operations.

7. Because of the importance of these factors in a consideration of this case, it is respectfully requested that the Appellees be permitted to supplement the record on this appeal with the matters and things set forth in said deposition and this motion.

Respectfully submitted,

/s/ Thomas H. Anderson

Anderson & Nadeau, Attorneys for Appellees, 908 First National Bank Building, Miami 32, Florida.

(Certification of mailing omitted.)

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ATTACHMENT TO MOTION

Excerpts of the Minutes of the Regular Meeting of the Commission of the City of Miami, Florida.

On the 20th day of April, 1955, the Commission of the City of Miami, Florida, met at its regular place of meeting in Room 306, Dade County Courthouse, in regular session. The meeting was called to order at 9:33 o'clock [fol. 64] A.M. by Chairman Abe Aronovitz, and on roll call the following members of the Commission were found to be present:

Messrs. Christmas, Hearn, Quigg, Senerchia and Aronovitz.

* * * * * * *

Ordering Local Improvement H-511

The following resolution was introduced by Mr. Quigg, who moved its adoption:

Resolution No. 27240

A Resolution Ordering Local Improvement H-511

Be It Resolved by the City Commission of the City of Miami:

That a local improvement, described and designated as follows, shall be made:

Highway Improvement District H-511, as follows; on:

(a) S.W. 7th St. (S. W. 3rd Ave.—S.W. 17th Ave.)

This street shall be resurfaced from curb to curb with 1½ surface course of asphaltic concrete including returns and and intersections.

(b) S.E. 7th St. (S. Miami Ave.—Brickell Ave.)

(c) S.W. 7th St. (S.W. 2nd Ave.—S.W. 3rd Ave.)

(d) N. Miami Ave. (N. 20th St.—N. 36th St.)

(e) N.W. 22nd St. (N.W. 2nd Ave.—N.W. 5th Ave.)

These streets shall be resurfaced from curb to curb with a 1" minimum, leveling course and a 1" surface course of asphaltic concrete including returns and intersections.

Upon being seconded by Mr. Christmas the resolution was passed and adopted by the following vote—Ayes: Messrs. Christmas, Hearn, Quigg, Senerchia and Aronovitz. Noes: None.

Mr. Senerchia stated it was his understanding that the Commission had agreed not to assess property owners for a proportionate share of the cost of any resurfacing [fol. 65] of streets, and requested that any reference to

assessments for the cost of this improvement be stricken from the resolution, which was agreed to prior to roll call on the resolution.

* * * * * * * *

*Adjournment*: There being no further business to come before the Commission at this time, on motion duly made and seconded, the meeting was adjourned at 4:54 o'clock P.M.

(Certification of City Clerk's office omitted.)

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ATTACHMENT TO MOTION

Resolution No. 27240

A Resolution Ordering Local Improvement H-511

Be it Resolved by the City Commission of the City of Miami:

That a local improvement, described and designated as follows, shall be made:

Highway Improvement District H-511, as follows; on:

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(d) N. Miami Ave. (N. 20th St.—N. 36th St.)

(e) N.W. 22nd St. (N.W. 2nd Ave.—N.W. 5th Ave.)

These streets shall be resurfaced from curb to curb with a 1" minimum, leveling course and a 1" surface course of asphaltic concrete including returns and intersections.

Upon being seconded by Mr. Christmas the resolution was passed and adopted by the following vote—Ayes:

Messrs. Christmas, Hearn, Quigg, Senerchia and Aronovitz. Noes: None.

[fol. 66] Mr. Senerchia stated it was his understanding that the Commission had agreed not to assess property owners for a proportionate share of the cost of any resurfacing of streets, and requested that any reference to assessments for the cost of this improvement be stricken from the resolution, which was agreed to prior to roll call on the resolution.

* * * * * * *

Adjournment: There being no further business to come before the Commission at this time, on motion duly made and seconded, the meeting was adjourned at 4:54 o'clock P.M.

* * * * * * *

CLERK'S NOTE RE CONSOLIDATION

The following petition for rehearing and all subsequent papers filed and orders entered by the Supreme Court of Florida bore a consolidated caption and but a single order was entered in the causes as consolidated.

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IN SUPREME COURT OF FLORIDA

PETITION FOR REHEARING IN CASE NO. 28057 AND CASE NO. 28058

The Court, in reversing itself on rehearing granted, overlooked or failed to consider the following several points:

1. In holding that the appellees were estopped from challenging the validity of the assessment because they failed to follow the administrative procedure prescribed in the Charter, the Court overlooked or failed to consider:

(a) That this omission appeared on the face of the complaint, as amended;

(b) That as a result of a prior opinion of this Court, 67 [fol. 67] So. 2d 430, the City was given leave to move against the complaint, as amended;

(c) That in such motion the City expressly raised the question as to this estoppel;

(d) That the motion was denied;

(e) That the City took an interlocutory appeal, and on that appeal expressly raised the question of estoppel;

(f) That this Court affirmed the decree thereby adjudicating the sufficiency of the complaint, as amended.

This decision established the law of the case, and therefore the sufficiency of the complaint, as amended, is no longer open to question.

*Hamel* v. *Danko,* (Fla.) 82 So. (2) 321 (per Drew, J.)

See also: Dissenting opinions Justices Drew and Thornal, *Goldshalk* v. *City of Winter Park,* (Fla.) 95 So. (2) 9.

To hold now, after expensive and lengthy litigation, that the property owners are estopped to complain, and that the complaint is insufficient is plainly contrary to law and justice and overrules a long line of decisions, namely:

*Family Loan & Smetal* (sic) *Corporation,* 123 Fla. 900, 169 So. 48

*Higbee et al.* v. *Housing Authority of Jacksonville,* 143 Fla. 560, 197 So. 479

*Oates* v. *New York Life Ins. Co.* 144 Fla. 744, 198 So. 681

*Jayner* v. *Bernard,* 160 Fla. 681, 36 So. (2) 364

2. In holding that the property owners were estopped to attack the assessments for want of benefits, because they did not file their action in the Circuit Court within the time fixed by the Charter (10 or 20 days), the Court overlooked the fact that the property owners never had notice of the [fol. 68] confirmation of the assessment roll, and therefore had no notice of when the time for following the statutory procedure began to run. Such lack of notice is violative of procedural due process. Amd. XIV U.S. Const.

3. In holding that the Charter provisions which attempted to limit the right of property owners to attack the

validity of special assessments by a petition filed within the time, and in the manner prescribed by the Charter, the Court overlooked, or failed to consider that such provisions are unconstitutional and void.

*Art. V. Sec. 11, Florida Constitution*
*Skinner* v. *Eustis,* 147 Fla. 22, 2 So. (2) 116
*State ex rel. Williams* v. *Whitman,* 116 Fla. 196, 156 So. 705
*Hayes* v. *Douglas County,* 92 Wis. 429, 65 N.W. 482 (new)
42 Am. Jur. 551, Sec. 187

4. In holding the notice of the confirmation of the assessment roll sufficient, and that the appellees were estopped to challenge the lack of benefits because they failed to object pursuant to the notice, the Court overlooked, or failed to consider that the procedure for the imposition of assessment liens is quasi judicial and that the requirements of procedural due process guaranteed by Amd. XIV U.S. Const. must be complied with. In the case of residents, constructive notice, as attempted, is violative of the rights secured by such amendment.

*Walker* v. *City of Hutchinson,* 77 S.Ct. 200
*Mullane* v. *Central Hanover Bank & Trust Co.* et al., 339 U.S. 306

5. The Court, in holding the notice good, overlooked or failed to consider that the notice directed to all interested persons did not contain any notice or warning (even by inference) that a special assessment was going to be levied. [fol. 69] This omission was fatal.

*Rafkin* v. *City of Miami Beach,* (Fla.) 38 So. (2) 836
*63 C.J.S. 747,* Sec. 1095
*Hayes* v. *Douglas County,* 92 Wis. 429, 65 N.W. 482 (new)

6. In holding the notice of hearing on confirmation of the assessment roll to be sufficient, the Court overlooked or failed to consider that the notice did not comply with the Charter which expressly requires (56-1) that the notice

state that hearings be had at a "regular" commission meeting.

*Merrill on Notice*, Par. 754

7. In holding the notice sufficient, this Court overlooked or failed to consider that when the initial notice of hearing on confirmation of resolutions establishing the improvement districts, all of the streets were included in one notice. When notices with respect to confirmation of the assessment roll were published the district was broken down and five (5) separate notices, each relating to an isolated segment, were published. This was not in compliance with the Charter, and resulted in confusion, if not deception, as it could well have indicated abandonment of intention to levy a special assessment.

8. In holding the notice sufficient, this Court overlooked or failed to consider the fact that the City Charter and requirements of due process required that the notice state the *time* and *place* where the objectors will be heard. This the notice wholly failed to do. In so holding this Court departed from or overruled the following cases:

*City of Fort Myers* v. *State*, 95 Fla. 704, 117 So. 97

See also:

*48 Am. Jur. 710*
*63 C.J.S. 1180*
[fol. 70] *Merrill on Notice*, Section 520
*Bellingham Bay & B.C.R. Co.* v. *City of New Whatcom*, 172 U.S. 314
*City of Norfolk* v. *Young*, 94 Va. 728, 34 S.E. 886
*McGavack* v. *City of Omaha*, 40 Neb. 64 58 N.W. 543
*City of Logansport, et al.* v. *Pollard*, 50 Inc. 151
*City and County of Denver* v. *State Investment Co.*, 49 Colo. 244, 112 P. 789

9. The Court overlooked or failed to consider that the Chancellor made a finding, after a full hearing, that the assessed property owners received no benefit from the resurfacing. Thoraal, J., in his concurring opinion, found that this finding was abundantly supported by the record. Such a finding renders the assessment wholly void, discrimina-

tory, unconstitutional and void under the State Constitution, as well as the Equal Protection and Due Process Clauses of the Federal Constitution.

10. The Court overlooked or failed to consider the innumerable holdings of this and other courts that a special assessment is void unless founded upon special benefit to the abutting owners.

*Village of Norwood* v. *Baker*, 172 U.S. 269
*Utley* v. *City of St. Petersburg*, 107 Fla. 6, 144 So. 58
*Rafkin* v. *City of Miami Beach*, 32 So. (2d) 836
*Fischer* v. *Board of County Commissioners*, 84 So. (2) 572 (per Thornal, J.) (new)

11. The Court overlooked or failed to consider that where a special assessment is void for lack of benefits or otherwise, no estoppel arises.*

[fol. 71] *Finlayson* v. *Monticello*, 137 Fla. 768, 189 So. 21
*Gulf View Apartments* v. *City of Venice*, 108 Fla. 41, 156 So. 842
*Harvey* v. *City of St. Petersburg*, 138 Fla. 597, 189 So. 861
*Coombes* v. *City of Coral Gables*, 124 Fla. 374, 168 So. 524
*Milwaukee Electric Ry. & Light Co.* v. *Village of Shorewood, et al.*, (Wis.) 193

12. The Court overlooked or failed to consider the appellee's Petition to Supplement the Record by showing that since the work was done as set out in the complaint, the City has, on other occasions, done similar work in similar districts for which it made no charge to the abutting owners. This work, done by virtue of a City ordinance, is class legislation and therefore denies to the appellees the equal protection of the laws, contrary to the Amendment ambit XIV U.S. Constitution.

*Utley* v. *City of St. Petersburg*, 107 Fla. 6, 144 So. 58

* Likewise, lapse of time cannot give validity to a void assessment. Ward v. Board, etc. (Ct. Ct. N.J.) 93 Atl. 364.

For the reasons stated a rehearing and re-argument of this case should be had, and on such reconsideration the decree appealed from should be affirmed.

Respectfully submitted,

.....

Clyde Eppedson and Anderson & Nadeau, Attorneys for Appellees, 908 First National Bank Building, Miami 32, Florida.

(Certification of mailing omitted.)

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[fol. 72]

IN SUPREME COURT OF FLORIDA

AMENDMENT TO PETITION FOR REHEARING IN CASE NO. 28057 AND CASE NO. 28058

The Appellees hereby amend their Petition for Rehearing by adding thereto paragraphs "13" and "14", as follows:

13. The Appellant has relied in this case very largely upon the holding of this Court in *Escott* v. *The City of Miami*, 107 Fla. 273, 144 So. 397. It is contended that under the doctrine of stare decisis, this Court is bound to follow the ruling stated in that case. The Appellees rely upon the doctrine of the law of this Court on the prior appeal in *City of Miami* v. *Hamilton*, 73 So. 2d 715. The rule as to the law of the case is much stronger in its application than that of stare decisis; and this is so because the former inheres in the judgment itself, while the latter is simply a guide for the determination of cases presenting similar situations. In a case wherein the justice of the situation is contrary to the rule laid down, the prior decision which is supposed to furnish a precedent, must be thrown out in the resulting conflict. Such was the holding of this Court in *Hargrove* v. *The Town of Coco Beach* (Fla.) 96 So. 2d 130 (per Thornal, J.). In this case, the Court refused to follow prior decisions saying: "Judicial consistency loses its virtue when it is degraded by the vice of injustice."

14. By Senate Bill 1337, the Florida Legislature passed an act at the 1957 Session, which confirmed all resolutions which the City Commission had passed under the provisions of Section 56 of the Charter, in attempting to order the construction of local improvements which were confirmed before January 1, 1957:

> "excepting those resolutions or proceedings and those special assessments, the validity of which, in whole or in part, was questioned in actions filed in the Circuit Court of Dade County before said January 1, 1957, * * * ."

Respectfully submitted,

.....

[fol. 73] Clyde Epperson and Anderson & Nadeau, Attorneys for Appellees, 908 First National Bank Building, Miami, Florida.

(Certification of mailing omitted.)

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IN SUPREME COURT OF FLORIDA

APPLICATION TO FILE BRIEF IN CASE NO. 28057 AND CASE NO. 28058

The Appellees respectfully show to the Court that in the Petition for Rehearing substantial and grave constitutional questions concerning the legality of the notice involved in this case are raised. These questions deserve to be briefed and argued and are of sufficient importance to warrant this Court in ordering that that be done.

Wherefore, Appellees request that they be permitted to file a brief confined solely to the Federal Constitutional questions presented by the Petition for Rehearing.

Respectfully submitted,

Thomas H. Anderson

Clyde Epperson and Anderson & Nadeau, Attorneys for Appellees, 908 First National Bank Building, Miami 32, Florida.

IN SUPREME COURT OF FLORIDA

February 4, 1958

ORDER GRANTING APPLICATION TO FILE BRIEF IN CASE NO. 28057 AND CASE NO. 28058

On application of attorney for appellees in the above named consolidated causes, it is ordered that said attorney [fol. 74] be and he is hereby allowed until February 13, 1958, to file brief in this cause confined solely to the federal constitutional question presented by the petition for rehearing.

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IN SUPREME COURT OF FLORIDA

ORDER DENYING MOTION ETC.—APRIL 2, 1958 IN CASE NO. 28057 AND CASE NO. 28058

The motion of appellees to amend the order denying petition to supplement record has been duly considered and is denied.

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IN SUPREME COURT OF FLORIDA

ORDER GRANTING APPELLANT'S MOTION TO STRIKE APPELLEES' BRIEF ETC.—APRIL 2, 1958 IN CASE NO. 28057 AND CASE NO. 28058

The motion of appellant in the above consolidated causes for the entry of an order striking appellees' brief filed on Federal Constitutional questions raised by appellees' petition for rehearing has been duly considered and is granted.

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[fol. 75]

IN SUPREME COURT OF FLORIDA

ORDER DENYING PETITION FOR REHEARING—APRIL 2, 1958 IN CASE NO. 28057 AND CASE NO. 28058

The attorneys for appellees have filed a petition for a rehearing and reconsideration of the above consolidated

causes, and, the same having been duly considered, it is ordered that said petition be and the same is hereby denied.

Chief Justice Terrell and Justices Drew, O'Connell and Thornal concurred in the order denying petition for rehearing. Justices Thomas, Roberts and Hobson dissented and voted to grant the petition.

---

IN SUPREME COURT OF FLORIDA

ORDER STAYING MANDATE—APRIL 2, 1958 IN CASE NO. 28057 AND CASE NO. 28058

On application of appellees, it is ordered that the mandate in the above consolidated causes be withheld in this Court for ninety (90) days from this date and the execution and enforcement of the judgments of this Court rendered in said causes on October 11, 1957 (petition for rehearing denied on this date), be and it is hereby stayed for ninety (90) days from this date to enable the appellees to have a reasonable time in which to apply for and to obtain, if they can, a review of the opinions and judgments of this Court by the Supreme Court of the United States. This order is subject to cancellation at any time if appellees fail to prosecute such proceedings for review with reasonable dispatch.

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[fol. 76]

IN SUPREME COURT OF FLORIDA

No. 28,057

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. Notice Is Hereby Given that Norton R. Ganger and L. C. Bethart, and all persons belonging to the class for whom suit was brought and who are the appellees above named, hereby appeal to the Supreme Court of the United States from the opinion and judgment entered herein on petition for rehearing granted, which opinion and judgment reversed a final decree of the Circuit Court of Dade County, Florida, dated February 17, 1955, recorded in

Chancery, Order Book 1171, Page 362 of the Public Record of Dade County, Florida. The opinion or judgment of the Supreme Court of Florida which reversed the judgment of the Circuit Court being filed with the clerk of the Supreme Court of the State of Florida on October 9, 1957. An order denying appellees' petition for rehearing, was entered on April 2, 1958.

This appeal is taken pursuant to Title 28 United States Code, Section 1257(2).

II. The clerk will please prepare a transcript of record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(The directions to the Clerk embodied in this Notice of Appeal, numbered 1 to 32, are identical with those directions to the Clerk embodied in the Notice of Appeal filed in Case No. 28,058, and are accordingly omitted from this transcript at the direction of counsel for appellant)

33. Notice of Appeal filed by Norton R. Ganger and L. C. Bethart.

[fol. 77] III. The following questions are presented by this appeal:

1. Is notice of hearing on special assessments as to resident owners whose interest, names and addresses were known by, in the possession of, and readily available to the City imposing the assessments, sufficient to comply with the requirements of the due process clause of Article XIV, Section 1, Amendments to the Constitution of the United States, where it affirmatively appeared that the notice was published only two times in the classified section of a large metropolitan newspaper, that no other or further notice was given to or served on the abutting owners, and where the trial court affirmatively found that the alleged improvement conferred no benefit upon the abutting property?

2. Where a state statute requires abutting property owners of a particular municipality to file suit in the Circuit Court of Dade County within ten (10) days of con-

firmation of the special assessment roll, and the resident property owners had no notice of any of the proceedings other than by notice of a hearing of objections to the roll published in the classified section of a local metropolitan newspaper, is such a limitation upon the right of abutting property owners to resort to the court violative of the due process and equal protection clauses of the Federal Constitution?

/s/ Thomas H. Anderson, Attorney for Appellants,
908 First National Bank Bldg., Miami 32, Florida.

Certificate of Service (omitted in printing).

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[fol. 78]

IN SUPREME COURT OF FLORIDA

No. 28,058

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice Is Hereby Given that Thomas B. Hamilton and Jane Q. Hamilton, his wife, and Hunter Lyon, Inc., a Florida corporation, and all persons belonging to the class for whom suit was brought, and who are the appellees above named, hereby appeal to the Supreme Court of the United States from the opinion and judgment entered herein on petition for rehearing granted, which opinion and judgment reversed a final decree of the Circuit Court of Dade County, Florida, dated February 17, 1955, recorded in Chancery Order Book 1171, Page 385, of the Public Records of Dade County, Florida. The opinion and judgment of the Supreme Court of Florida being appealed from, and which reversed the judgment of the Circuit Court, was filed with the Clerk of the Supreme Court of the State of Florida on October 9, 1957. An order denying appellees' petition for rehearing was filed with the Clerk of the Supreme Court of Florida on April 2, 1958.
[fol. 79] This appeal is taken pursuant to Title 28 United States Code, Section 1257(2).

II. The Clerk will please prepare a transcript of record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The Amended Complaint, including Exhibit 2.
2. The City's defensive motions.
3. The Order of December 21, 1953.
4. The Petition for Certiorari to the Supreme Court.
5. The Order Denying Petition for Certiorari dated April 12, 1954.
6. The defendant's Answer.
7. The original exhibits comprising the Special Assessment Lien Records.
8. The final Decree.
9. The Order Amending Final Decree.
10. The Notice of Appeal.
11. The Assignments of Error.
12. Recite that on April 1, 1954, Norton R. Ganger and L. C. Bethart sued for themselves and all others similarly situated and filed their complaint which was substantially identical with the complaint filed in the case of Hamilton v. City of Miami, No. 159201. Also recite that the Ganger case was No. 167798-G, and that the City filed an Answer substantially identical with that filed in the Hamilton case.
13. The Final Decree in Chancery Cause No. 167798-G.
14. Notice of Appeal.

[fol. 80] 15. Assignments of Error.

16. The order of Consolidation dated April 22, 1955.
17. The Opinion of the Supreme Court dated January 30, 1957, including the special concurring opinion of Thornal, Jr., (sic) and dissenting opinion of Drew, J.
18. The Opinion in Case No. 28,058.
19. The Petition for Rehearing in Case No. 28,057.
20. The Petition for Rehearing in Case No. 28,058.

21. The Order granting Petition for Rehearing in both cases.

22. The Opinion in Case No. 28,057 on rehearing granted, including the dissenting opinion of Thomas, J.

23. The Opinion in Case No. 28,058.

24. The Motion for Leave to Supplement the Record, including all exhibits.

25. The petition for Rehearing.

26. The Amendment to Petition for Rehearing.

27. The application for leave to file brief.

28. The Order granting leave.

29. The order of April 2, 1958, denying Petition to supplement record.

30. The Order Granting Appellant's motion to Strike Appellees' Brief filed on constitutional questions.

31. The Order Denying Petition for Rehearing filed April 2, 1958.

Recite that the Order Denying Petition for Rehearing was concurred in by Terrell, C.J. and Drew, O'Connell and Thornal, J.J., and that it was dissented from by Justices Thomas, Roberts and Hobson.

[fol. 81] 32. The Order Staying Mandate.

33. The Notice of Appeal to the Supreme Court of the United States.

III. The following questions are presented by this appeal:

1. Is notice of hearing on special assessments as to resident owners whose interest, names and addresses were known by, in the possession of, and readily available to the City imposing the assessments, sufficient to comply with the requirements of the due process clause of Article XIV, Section 1, Amendments to the Constitution of the United States, where it affirmatively appeared that the

notice was published only two times in the classified section of a large metropolitan newspaper, that no other or further notice was given to or served on the abutting owners, and where the trial court affirmatively found that the alleged improvement conferred no benefit upon the abutting property?

2. Where a state statute requires abutting property owners of a particular municipality to file suit in the Circuit Court of Dade County within ten (10) days of confirmation of the special assessment roll, and the resident property owners had no notice of any of the proceedings other than by a notice of a hearing of objections to the roll published in the classified section of a local metropolitan newspaper, is such a limitation upon the right of abutting property owners to resort to the court violative of the due process and equal protection clauses of the Federal Constitution?

/s/ Thomas H. Anderson, Attorney for Appellants,
908 First National Bank Bldg., Miami 32, Florida.

[fol. 82] Certificate of service (omitted in printing).
[fol. 86] Clerk's Certificate to foregoing transcript (omitted in printing).

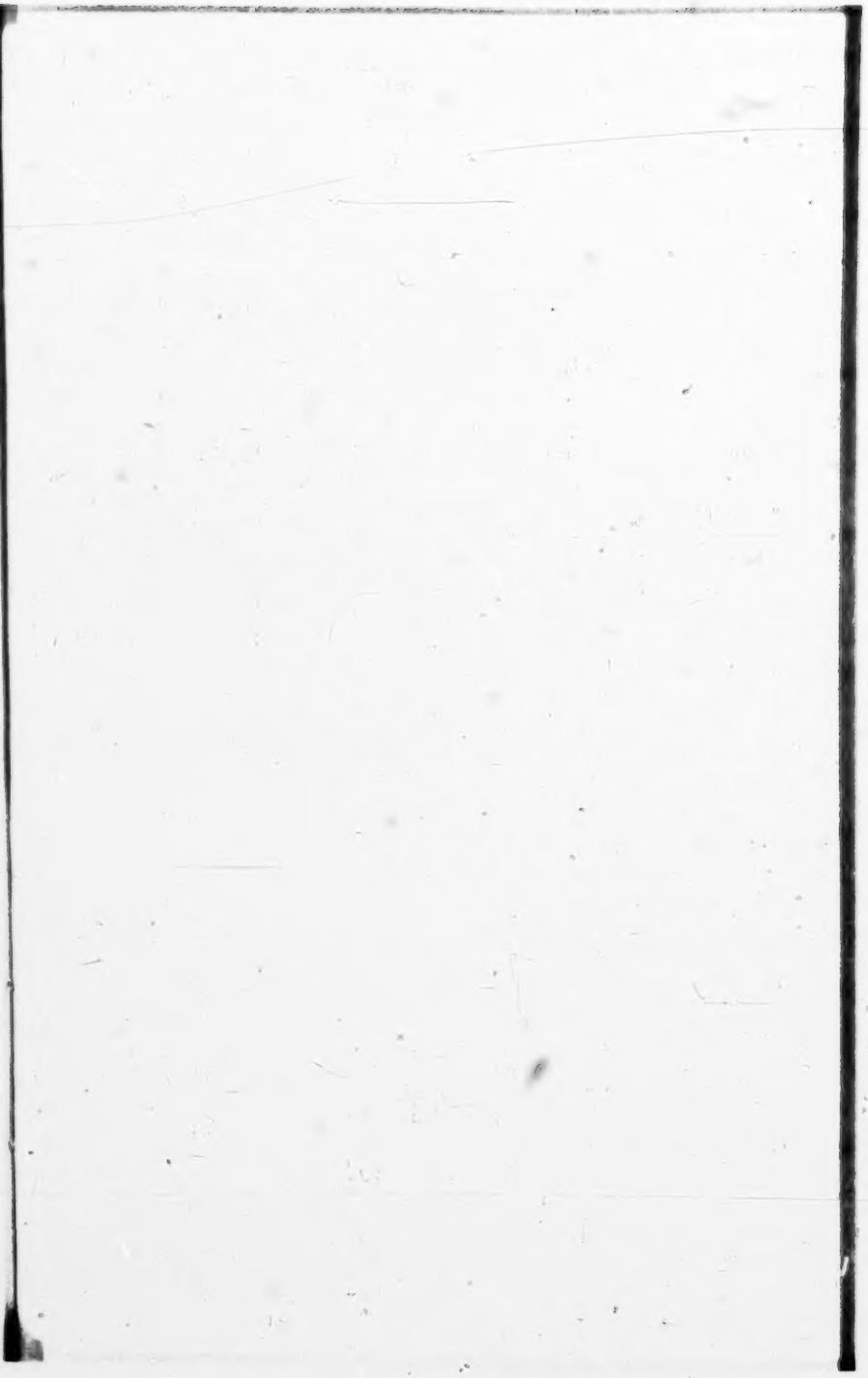
[fol. 87]

DEFENDANT'S UNNUMBERED EXHIBIT

[fol. 88]

(See Opposite)☞

FOLDOUTS TOO
BE FILMED



LARGE TO

[fol. 90]

PLAINTIFF'S EXHIBIT #10 FILED IN EVIDENCE
7/22/54

159201 and ——

RESOLUTION NUMBER 25006

HIGHWAY IMPROVEMENT DISTRICT H-503

A RESOLUTION ORDERING LOCAL IMPROVEMENT H-503

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI:

That a local improvement, described and designated as follows, shall be made under Section 56 of the City Charter:

Highway Improvement H-503 as follows:

ON:

South Miami Avenue, from S.W. 15th Street Road to 200' more or less south of Alatka Street.

This street shall be resurfaced from curb to curb with approximately ½" leveling course and 1" surface course of asphaltic concrete, including returns and intersections.

The property against which special assessments for the cost thereof shall be made is hereby designated District H-503.

PASSED AND ADOPTED this 19th day of November, 1952.

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[fol. 91]

STATE OF FLORIDA
COUNTY OF DADE
CITY OF MIAMI

I, F. L. CORRELL, Clerk of the City of Miami, Florida, do hereby certify that the attached and foregoing contains a true and correct copy of a resolution passed and adopted by the Commission of the City of Miami, Florida, at a meeting held on the 19th day of November, 1952, and designated Resolution No. 25006.

WITNESS my hand and the official seal of the City of Miami, Florida, this 14th day of July, 1954.

F. L. CORRELL
CITY CLERK

By /s/ CHARLES H. SELLS
Charles H. Sells
Deputy City Clerk

(Seal)

---

[fol. 92]

NOTE RE EXHIBIT NO. 10

"The map of the streets of the City of Miami, which was a part of Exhibit 10, has been deleted from the printed record at the request of counsel for appellants."

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[fol. 93]

CITY MANAGER'S ESTIMATE OF COST

OF

LOCAL IMPROVEMENT AND INCIDENTAL EXPENSE

HIGHWAY IMPROVEMENT DISTRICT H-503
ORDERED BY RESOLUTION NO. 25006
ADOPTED November 19, 1952

| | | |
|---|---|---|
| ESTIMATED COST OF IMPROVEMENT ..... | | $60,500.00 |
| ESTIMATED INCIDENTAL EXPENSES: | | |
| 1. Surveys and Estimates ..... | $1500.00 | |
| 2. Inspection, tests and supervision of construction ..... | $2500.00 | |
| 3. Preparation of plans and specifications ..... | $1000.00 | |
| 4. Printing and publishing notices and proceedings ..... | $ 100.00 | |
| 5. Preparation of bonds ..... | $ | |
| 6. Interest during construction .... | $ | |
| 7. Legal services, abstracts, etc. .... | $ | |

| | | |
|---|---|---|
| 8. Other necessary and proper expenses | $ 900.00 | |
| Total incidental expenses | | $ 6000.00 |
| TOTAL ESTIMATED COST AND INCIDENTAL EXPENSES | | $66,500.00 |

DISTRIBUTION:

| | | |
|---|---|---|
| 1. Estimated cost to be paid by City of Miami | | $ 9,975.00 |
| 2. Estimated cost to be assessed abutting property | | $56,525.00 |
| 3. Estimated cost of —— lin. ft. lateral | | $ |
| 4. Number of feet of property abutting improvement | | $17,024 |
| 5. Estimated assessment per front foot | | $ 3.32 |
| 6. Estimated assessment per lin. ft. of lateral | | $ |

WITNESS my signature at Miami, Florida, this 21st day of November, A.D. 1952.

(S) E. A. Evans
City Manager

Prep. by DWM 10/15/52
Ckd. by RNR 10/15/52

[fol. 94]
STATE OF FLORIDA
COUNTY OF DADE
CITY OF MIAMI

I, F. L. CORRELL, Clerk of the City of Miami, Florida, do hereby certify that the attached and foregoing contains a true and correct copy of City Manager's Estimate of Cost of Local Improvement and Incidental Expense regarding Highway Improvement District H-503.

Witness my hand and the official seal of the City of Miami, Florida, this 13th day of July, 1954.

F. L. Correll
City Clerk

By /s/ Charles H. Sells
Charles H. Sells
Deputy City Clerk

(Seal)

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[fol. 95]

## RESOLUTION NO. 25568

A Resolution Directing the Publication of Notices for Objections to Paving Improvements in the Area Designated as Highway Improvement District H-503

---

Whereas, the City Manager has reported that Asphalt Paving Company has completed paving improvements on South Miami Avenue, from S. W. 15th Street Road to 200' more or less south of Alatka Street, designated as Highway Improvement District H-503, in accordance with the City plans and specifications for said improvements, and

Whereas, the City Charter requires the publication of a notice for objections to persons interested in or affected by said improvements as to the acceptance thereof by the Commission.

Now, Therefore, Be It Resolved by the Commission of the City of Miami, Florida:

Section 1. That the City Clerk be, and he is hereby, authorized and directed to publish a notice in a newspaper published in the City of Miami, Florida, that at a meeting of the City Commission to be held on June 3, 1953, the City Commission will hear any objections of persons interested in or affected by the improvements as to the acceptance by the City Commission.

Passed and Adopted this 20th day of May, 1953.

[fol. 96]
STATE OF FLORIDA
COUNTY OF DADE
CITY OF MIAMI

I, F. L. CORRELL, Clerk of the City of Miami, Florida, do hereby certify that the attached and foregoing contains a true and correct copy of a resolution passed and adopted by the Commission of the City of Miami, Florida, at a meeting held on the 20th day of May, 1953, and designated Resolution No. 25568.

WITNESS my hand and the official seal of the City of Miami, Florida, this 14th day of July, 1954.

F. L. CORRELL
CITY CLERK

By /s/ CHARLES H. SELLS
Charles H. Sells
Deputy City Clerk

(Seal)

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[fol. 97]

## RESOLUTION NO. 25017

A RESOLUTION CONFIRMING THE ORDERING RESOLUTION FOR PAVING IMPROVEMENTS INCLUDED IN HIGHWAY IMPROVEMENT DISTRICT H-503

---

WHEREAS, at a meeting of the City Commission at 9:30 a. m., December 3rd, 1952, objections were heard to the confirmation of Resolution No. 25006, adopted November 19th, 1952, ordering local paving improvements in the area designated as Highway Improvement District H-503, and the plans, specifications and estimates of cost thereof, and no objections were filed;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. That Resolution No. 25006, adopted November 19th, 1952, ordering local paving improvements in the area

designated as Highway Improvement District H-503 be, and the same is hereby, confirmed.

PASSED AND ADOPTED this 3rd day of Dec., 1952.

[fol. 98]

STATE OF FLORIDA
COUNTY OF DADE
CITY OF MIAMI

I, F. L. CORRELL, Clerk of the City of Miami, Florida, do hereby certify that the attached and foregoing contains a true and correct copy of a resolution passed and adopted by the Commission of the City of Miami, Florida, at a meeting held on the 3rd day of December, 1952, and designated Resolution No. 25017.

WITNESS my hand and the official seal of the City of Miami, Florida, this 14th day of July, 1954.

F. L. CORRELL
CITY CLERK

By /s/ CHARLES H. SELLS
Charles H. Sells
Deputy City Clerk

(Seal)

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[fol. 99]

THE MIAMI HERALD

PUBLISHED DAILY

MIAMI — DADE — FLORIDA

STATE OF FLORIDA
COUNTY OF DADE:

Before the undersigned authority personally appeared M. F. Self, who on oath says that he is Classified Advertising Manager of The Miami Herald, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement, being a .....
in the matter of .....

in the ..... Court, was published in said newspaper in the issues of
November 22, 1952

Affiant further says that the said The Miami Herald is a newspaper published at Miami, in the said Dade County, Florida, and that the said newspaper has heretofore been continuously published in said Dade County, Florida, each day and has been entered as second class mail matter at the post office in Miami, in said Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

/s/ M. F. Self

Sworn to and subscribed before me this 22nd day of November, A. D. 1952.

/s/ J. Fenwick Beossier
Notary Public, State of Florida at large.
My commission expires June 12, 1956.

My commission expires

(Seal)

Notice of Local Improvement
Highway Improvement District 503

All interested will take notice that at a meeting of the City Commission at 9:30 A. M. December 3rd, 1952, their objections will be heard to the confirmation of Resolution No. 25006, adopted November 19th, 1952, ordering paving improvements on South Miami Avenue, from S. W. 15th Street Road to 200′ more or less south of Alatka Street, designated improvement H-503.

Plans, specifications and estimate of cost of said improvement are on file in the City Clerk's office.

F. L. Correll
City Clerk

November 22, 1952.

[fol. 100]

THE MIAMI HERALD

PUBLISHED DAILY

MIAMI — DADE — FLORIDA

STATE OF FLORIDA
COUNTY OF DADE:

Before the undersigned authority personally appeared M. F. Self, who on oath says that he is Classified Advertising Manager of The Miami Herald, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement, being a ..... in the matter of ..... in the ..... Court, was published in said newspaper in the issues of
May 23, 1953

Affiant further says that the said The Miami Herald is a newspaper published at Miami, in the said Dade County, Florida, and that the said newspaper has heretofore been continuously published in said Dade County, Florida, each day and has been entered as second class mail matter at the post office in Miami, in said Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

/s/ M. F. SELF

Sworn to and subscribed before me this 23rd
day of May, A. D. 1953.

/s/ J. FENWICK BEOSSIER
Notary Public, State of Florida at large.
My commission expires June 12, 1956.

My commission expires

(Seal)

NOTICE TO PROPERTY OWNERS
Acceptance of Highway Improvement District H-503

All interested will take notice that paving work on South Miami Avenue, from S.W. 15th Street Road to 200′ more or less south of Alatka Street, designated Highway Improvement District H-503, has been completed and that at a meeting of the City Commission at 9:30 o'clock A.M. June 3rd., 1953, their objections will be heard to the acceptance thereof by the Commission.

F. L. CORRELL
City Clerk

5-23-53

[fol. 101]

RESOLUTION NO. 25598

A RESOLUTION INCREASING THE SCOPE OF THE ASPHALT PAVING COMPANY CONTRACT FOR RESURFACING WORK IN THE AREA DESIGNATED AS HIGHWAY IMPROVEMENT DISTRICT H-503, ACCEPTING THE COMPLETED WORK AND AUTHORIZING FINAL PAYMENT THEREFOR.

WHEREAS, a contract exists with Asphalt Paving Company for the resurfacing of South Miami Avenue, from S.W. 15th Street Road to 200′ more or less south of Alatka Street, designated as Highway Improvement District H-503, and

WHEREAS, due to an overrun of certain quantities and the removal of curb and gutter and rock pavement, it will be necessary to increase the scope of the Asphalt Paving Company contract in the amount of $2,834.58, and

WHEREAS, the Commission met on June 3rd, 1953, after due legal notice, for the purpose of hearing any objections to the acceptance of paving improvements performed by Asphalt Paving Company, pursuant to their contract dated March 13, 1953, including resurfacing of South Miami Avenue from S. W. 15th Street Road to 200′ more or less south of Alatka Street, designated as Highway Improvement District H-503, and no objections having been filed, and

WHEREAS, it is shown by the report of the City Manager, which has been filed for identification, that the improvements in the District aforesaid have been properly and completly done at a total cost of $48,605.08, and are in conformity to the plans, specifications, profiles, details and drawings of the City Manager, as adopted by the Commission of the City of Miami, Florida for such improvements, and being satisfied that said work has been done and completed in accordance therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. That the scope of the Asphalt Paving Com-
[fol. 102] pany contract, dated March 13, 1953, for resurfacing the aforementioned street, designated as Highway Improvement District H-503 be, and the same is hereby, increased to include the sum of $2,834.58.

Section 2. That the construction of paving improvements, as set forth above, be, and the same are hereby, accepted at a total cost of $48,605.08.

Section 3. That the proper officials of the City of Miami, Florida be, and they are hereby, authorized and directed to pay Asphalt Paving Company the sum of $12,354.84 as full and final payment for work performed and materials furnished in connection with the aforementioned contract.

PASSED AND ADOPTED this 3 day of June, 1953.

[fol. 103]
STATE OF FLORIDA
COUNTY OF DADE
CITY OF MIAMI

I, F. L. CORRELL, Clerk of the City of Miami, Florida do hereby certify that the attached and foregoing pages numbered 1 through 2, inclusive, contain a true and correct copy of a resolution passed and adopted by the Commission of said City at a meeting held on the 3rd day of June, 1953 designated Resolution No. 25598.

WITNESS, my hand and the official Seal of The City of Miami, Florida this 15 day of July, 1954.

F. L. CORRELL
City Clerk

By /s/ RAYMOND I. MOORE
Deputy City Clerk

(Seal)

[fol. 104]

## RESOLUTION NO. 26250

A RESOLUTION CONFIRMING THE PRELIMINARY ASSESSMENT ROLL FOR CONSTRUCTION OF CERTAIN PAVING IMPROVEMENTS IN A PORTION OF HIGHWAY IMPROVEMENT DISTRICT H-503

---

WHEREAS, the Commission of the City of Miami, Florida met on the 3rd day of February, 1954, pursuant to due legal notice of said meeting under Section 56, City Charter to hear all written objections to the confirmation of the preliminary assessment roll for the cost of paving improvements, as follows:

> South Miami Avenue from S.W. 15th Road to 320 feet, more or less South of Alatka Street

in a portion of Highway Improvement District H-503, and

WHEREAS, no objections thereto were made by any person interested in, or affected by said assessment roll and the said assessment roll appearing, in all respects, regular and in accordance with the requirements and provisions of the City Charter;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. That the prima facia (sic) assessments, as apportioned and indicated on said preliminary assessment roll be, and they are hereby, in all things, confirmed and sustained against any and all lots or parcels of ground described therein.

Section 2. That the sums and amounts assessed against each of the lots or parcels of ground in said preliminary

rolls are less than the amount that each of the said lots or parcels of ground is especially benefited by said improvement and that such amounts are in proportion to the special benefits that the property received and that the proportion of said costs to be paid by the City of Miami are the sums set forth opposite the same therein.

Section 3. That the total cost of the said paving improvements in the sum of $41,395.48 be, and the same is hereby, approved and confirmed.

Passed and Adopted this 18 day of Feb. 1954.

[fol. 105]

State of Florida
County of Dade
City of Miami

I, F. L. Correll, Clerk of the City of Miami, Florida, do hereby certify that the attached and foregoing contains a true and correct copy of a resolution passed and adopted by the Commission of the City of Miami, Florida, at a meeting held on the 18th day of February, 1954, and designated Resolution No. 26250.

Witness my hand and the official seal of the City of Miami, Florida, this 14th day of July, 1954.

F. L. Correll
City Clerk

By /s/ Charles H. Sells
Charles H. Sells
Deputy City Clerk

(Seal)

[fol. 106]

THE MIAMI HERALD

Published Daily

Miami — Dade — Florida

State of Florida
County of Dade:

Before the undersigned authority personally appeared M. F. Self, who on oath says that he is Classified Adver-

tising Manager of The Miami Herald, a daily newspaper published at Miami in Dade County, Florida; that the attached copy of advertisement, being a .....
in the matter of .....
in the ..... Court, was published in said newspaper in the issues of
January 19, 26, 1954

Affiant further says that the said The Miami Herald is a newspaper published at Miami, in the said Dade County, Florida, and that the said newspaper has heretofore been continuously published in said Dade County, Florida, each day and has been entered as second class mail matter at the post office in Miami, in said Dade County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

/s/ M. F. Self

Sworn to and subscribed before me this 28th day of January, A. D. 1954.

/s/ J. Fenwick Beossier
Notary Public, State of Florida at large.
My commission expires June 12, 1956.

My commission expires

(Seal)

Notice to Property Owners
Preliminary Assessment Roll—
District H-503

All interested will take notice that at a meeting of the City Commission at 9:30 o'clock AM February 3rd, 1954, their objections will be heard to the confirmation of the Preliminary Assessment Roll for the cost of paving improvements on South Miami Avenue, from SW 15th Road to 320 feet more or less South of Alatka Street, in District H-503.

Said Preliminary Assessment Roll is now open to public inspection in the City Clerk's Office.

F. L. Correll
City Clerk

Jan 19, 26: 1954

[fol. 107]

Excerpts of
Minutes of the Regular Meeting of the Commission of the City of Miami, Florida

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On the 19th day of November, 1952, the Commission of the City of Miami, Florida, met at the City Hall in said City in regular session. The meeting was called to order at 9:31 o'clock A.M. by Chairman Chelsie J. Senerchia, and on roll call the following members of the Commission were found to be present: Messrs. Palmer, Quigg, Wolfarth and Senerchia. Absent: Mr. Givens.

* * * * * * *

Recess:

The meeting was recessed at 12:45 o'clock P.M. to 1:30 o'clock P.M. this date.

The Commission reconvened at 1:30 o'clock P.M. with the following members present: Messrs. Palmer, Quigg, Wolfarth and Senerchia. Absent: Mr. Givens.

* * * * * * *

Ordering H-503

The following resolution was introduced by Mr. Wolfarth, who moved its adoption:

RESOLUTION NUMBER 25006

Highway Improvement District H-503

A Resolution Ordering Local Improvement H-503
Be It Resolved by the City Commission of the City of Miami:

That a local improvement, described and designated as follows, shall be made under Section 56 of the City Charter:

Highway Improvement H-503 as follows:

On:

South Miami Avenue, from S.W. 15th Street Road to 200′ more or less south of Alatka Street.

This street shall be resurfaced from curb to curb with approximately ½″ leveling course and 1″ surface course of Asphaltic concrete, including returns and intersections.

The property against which special assessments for the cost thereof shall be made is hereby designated District H-503. Upon being seconded by Mr. Quigg the resolution was passed and adopted by the following vote—Ayes: Messrs. Palmer, Quigg, Wolfarth and Senerchia. Noes: None.

* * * * * * *

[fol. 108] Adjournment: There being no further business to come before the Commission at this time, on motion duly made and seconded, the meeting was adjourned at 5:21 o'clock P.M.

(S) Chelsie J. Senerchia
Mayor

Attest: (S) F. L. Correll
City Clerk

[fol. 109]
State of Florida
County of Dade
City of Miami

I, F. L. Correll, Clerk of the City of Miami, Florida, do hereby certify that the attached and foregoing pages numbered 1 and 2, inclusive, contain a true and correct copy of Excerpts of Minutes of the Regular Meeting of the City Commission, held on the 19th day of November, 1952, regarding Resolution No. 25006.

Witness my hand and the official seal of the City of Miami, Florida, this 13th day of July, 1954.

F. L. Correll
City Clerk

By /s/ Charles H. Sells
Charles H. Sells
Deputy City Clerk

(Seal)

[fol. 110]

EXCERPT OF
MINUTES OF THE REGULAR MEETING OF THE COMMISSION
OF THE CITY OF MIAMI, FLORIDA

---

On the 3rd day of February, 1954, the Commission of the City of Miami, Florida met at the City Hall in said City in regular session. The meeting was called to order at 9:35 o'clock A.M. by Chairman Abe Aronovitz, and on roll call the following members of the Commission were found to be present: Messrs. Christmas, Hearn, Quigg and Aronovitz. Absent: Mr. Senerchia.

* * * * * * *

NOTE: Mr. Senerchia entered the meeting at 9:37 o'clock A.M.

* * * * * * *

OBJECTIONS TO CONFIRMATION OF PRELIMINARY ASSESSMENT ROLL—H-503:

The Mayor announced that, pursuant to legal notice, the Commission was ready to hear any objections to the confirmation of the Preliminary Assessment roll for the cost of highway improvements on South Miami Avenue from SW 15th Road to 320 feet more or less South of Alatka Street, in district H-503.

There were no objections filed with the Commission.

* * * * * * *

ADJOURNMENT:

There being no further business to come before the Commission at this time, on motion duly made and seconded, the meeting was adjourned at 5:35 P.M.

(S) ABE ARONOVITZ
Mayor

ATTEST: (S) F. L. CORRELL
City Clerk

[fol. 111]
STATE OF FLORIDA
COUNTY OF DADE
CITY OF MIAMI

I, F. L. CORRELL, Clerk of the City of Miami, Florida, do hereby certify that the attached and foregoing contains a true and correct Excerpt of the Minutes of the Meeting of the Commission of the City of Miami, Florida, held on the 3rd day of February, 1954, in connection with a public hearing for the purpose of considering any objections to the confirmation of the preliminary assessment roll for the Cost of Paving Improvements in Highway Improvement District H-503.

WITNESS my hand and the official seal of the City of Miami, Florida, this 16th day of July, 1954.

F. L. CORRELL
City Clerk

By /s/ H. D. SOUTHERN
H. D. Southern
Deputy City Clerk

(Seal)

[fol. 115]

SUPREME COURT OF THE UNITED STATES

No. 153—October Term, 1958

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NORTON R. GANGER, L. C. BETHART, THOMAS B. HAMILTON, et al., Appellants,

vs.

CITY OF MIAMI, a Municipal Corporation in Dade County, Existing Under the Law of the State of Florida.

---

Appeal from the Supreme Court of the State of Florida.

ORDER POSTPONING JURISDICTION—October 13, 1958

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. Counsel are directed to discuss the question of whether the constitutional issues were raised and decided below.